UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GEORGE SASSOWER,
Plaintiff, :

-against- :

ROBERT ABRAMS, FRANCIS T. MURPHY, XAVIER C. RICCOBONO, CHARLES L. BRIEANT, JAMES L. OAKES, A.R. FUELS, INC., HYMAN RAFFE, HOWARD BERGSON, FRED L. SHAPIRO, DONALD DIAMOND, CAROLYN CAIRNS OLSON, and MATTHEW T. CROSSON, :

Defendants. :

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OPINION AND ORDER

92 Civ. 8515 (PKL)

APPEARANCES

GEORGE SASSOWER
16 Lake Street
White Plains, New York 10603

Plaintiff Pro Se

ROGER B. HAYES, ESQ.
Acting United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Robert W. Sadowski, Esq., of counsel

Counsel for the Federal Defendants

LEISURE, District Judge:

This action is part of the latest series of lawsuits brought by plaintiff *pro se*, George Sassower, contesting the dissolution of Puccini Clothes, Ltd. in New York State Supreme Court in the early 1980s, as well as the later judicial decisions by federal courts in this Circuit which disposed of subsequent related actions brought by Sassower, and also issued various injunctions and orders in an attempt to prevent the filing of any additional vexatious and frivolous lawsuits by Sassower.

More specifically, by Order of the Court, dated December 10, 1987, the Honorable Charles L. Brieant, United States District Chief Judge, Southern District of New York, enjoined plaintiff from filing actions in the United States District Court for the Southern District of New York without prior leave of Court. In addition, in July 1989, after Sassower continued to submit voluminous papers to the Clerk's Office in White Plains for filing, Chief Judge Brieant orally directed the United States Marshal in the White Plains Courthouse to refuse plaintiff access to the Courthouse unless he had a legitimate purpose for entering.

Plaintiff Sassower now moves this Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a temporary restraining order and preliminary injunction seeking to enjoin the United States Marshal and Court Security Personnel at the United States District Courthouse in White Plains (the "White Plains Courthouse") from carrying out the instructions of Chief Judge Brieant to bar plaintiff from entering the Courthouse except for legitimate purposes. The federal defendants in this action are Chief Judge Brieant and the Honorable James L. Oakes, United States Circuit Judge, Court of Appeals for the Second Circuit (collectively referred to as "the federal defendants").

In addition, Sassower has brought a motion for sanctions, dated January 25, 1993, pursuant to Rule 11 of the Federal Rules of Civil Procedure, against the federal defendants and Assistant United States Attorney Robert Sadowski, Esq., for a statement made by Mr. Sadowski in a letter to the Court, dated January 14, 1993, which Sassower alleges is false.

For the reasons stated below, the plaintiff's motion for a temporary restraining order and preliminary injunction is denied. The Court also denies plaintiff's motion for Rule 11 sanctions.[1]

BACKGROUND

The focal point of Sassower's endless series of lawsuits is his basic contention that the assets of Puccini Clothes, Ltd. ("Puccini") were dissipated by the individuals, attorneys, accountants, receivers, and judicial officers who were involved in the dissolution and receivership of Puccini in New York State Supreme Court. See Raffe v. John Doe, 619 F. Supp. 891, 892 (S.D.N.Y. 1985).[2] Since that time, Sassower has continually

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[1] Having reviewed plaintiff's motions and the Government's opposition, the Court has determined that a hearing or oral argument on these issues is unwarranted.

[2] The early lawsuits were brought by Sassower as the attorney for Hyman Raffe, a shareholder of Puccini. Raffe v. John Doe, 619 F. Supp. at 892.

brought lawsuits to relitigate the merits of the Puccini receivership and to demonstrate that the members of an alleged conspiracy were successful as a result of the cooperation or inaction of judicial officers who oversaw the dissolution of Puccini, See Raffe v. John Doe, 619 F. Supp. at 892-93. As the Second Circuit has noted, "George Sassower has been an abusive litigant for a number of years. . . ." Sassower v. Sansverie, 885 F.2d 9, 10 (2d Cir. 1989).

After a long and tortured history of litigation in New York State courts, Sassower turned his attention to the federal courts to relitigate the Puccini dissolution. See Raffe v. John Doe, 619 F. Supp. at 894-95; Raffe v. Citibank, N.A., No. 84 Civ. 305 (E.D.N.Y. August 1, 1984). In Raffe v. John Doe, the Court dismissed a series of actions brought by Sassower with respect to the Puccini dissolution and issued an injunction barring plaintiff from filing suit in any federal court against individuals involved in the Puccini dissolution and receivership who were being harassed as a result of his vexatious suits. Raffe v. John Doe, 619 F. Supp. at 898; see also Sassower v. Sansverie, 885 F.2d at 10 (affirming the enforcement of a similar injunction against Sassower issued by the United States District Court for the Eastern District of New York).

In 1987, plaintiff commenced a new action against the Puccini defendants, as well as the Honorable William C. Conner, United States District Judge, Southern District of New York, who had presided over Raffe v. John Doe and had enjoined plaintiff from commencing suits against the Puccini defendants. <u>See</u> <u>Sassower v. Sapir et al.</u>, 87 Civ. 7135 (CSH).[3] During the <u>Sapir</u> litigation, Sassower added as a defendant the Honorable Charles S. Haight, Jr., United States District Judge, Southern District of New York, before whom the case was pending. Judge Haight then applied to Chief Judge Brieant for reassignment of the case based on the fact that he was now a defendant. <u>See</u> Declaration of J. Michael McMahon, dated January 28, 1993 ("McMahon Declaration"), Exhibit A.

In response to Judge Haight's request, Chief Judge Brieant issued a Memorandum and Order, dated December 10, 1987, finding that the amended complaint adding Judge Haight as a party defendant was served after Judge Haight had determined, by a Memorandum and Order, dated November 18, 1987, that all of plaintiff's motions in the <u>Sapir</u> action should be held in abeyance and no more motions should be filed, pending decision on defendants' motion to dismiss. Judge Brieant then dismissed the amended complaint and issued an order directing the Clerk of this Court "not to accept for filing any paper or proceeding or motion or new case of any kind presented by Mr. George Sassower, or naming him as a party plaintiff or petitioner, without the leave in writing first obtained from a judge or magistrate of this Court. . . ." McMahon Declaration, Exhibit A.

Despite the issuance of Judge Brieant's December 10, 1987

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[3] Sassower also named the Honorable Howard Schwartzberg, United States Bankruptcy Judge, Southern District of New York, as a defendant. Judge Schwartzberg presided over Sassower's bankruptcy proceeding.

order enjoining plaintiff from filing papers without leave of Court, plaintiff continued to submit voluminous papers to the Clerk's Office in White Plains for filing. These voluminous, sometimes duplicative, submissions became an inordinate burden to the Clerk's office and often resulted in new clerks, or clerks unfamiliar with plaintiff, accepting his papers for filing in violation of the Court's order. Moreover, according to the policy and practice of this Court, the screening of all pro se papers is the function of the Pro Se Clerk's Office located at the Foley Square Courthouse, not the Clerk's Office in White Plains. See McMahon Declaration, at ¶¶ 10-16.

Accordingly, in July 1989, Judge Brieant orally directed the United States Marshal in the White Plains Courthouse to refuse plaintiff access to the Courthouse unless he had a legitimate purpose for entering. See Declaration of Michael Witkowich, dated January 28, 1993 ("Witkowich Declaration"), at ¶ 4. A legitimate purpose did not include filing papers, delivering letters to judges' chambers, or disrupting the orderly operation of Courthouse business by monopolizing the attention of personnel in the Clerk's office. Id. This order was entered in an effort to prevent Sassower from circumventing the existing injunctions and orders currently in place against him, as well as to enforce the Court's procedures for accommodating pro se litigants.

In an effort to avoid the injunction which prohibits the filing of federal actions in this Court without prior leave from the Court, Mr. Sassower recently filed a series of actions, including the above referenced action, in the New York State Supreme Court against federal officers including Chief Judge Brieant. The Government has removed each of these cases to this Court. In the instant action, plaintiff's claims against the federal defendants arise out of orders issued by the District Court for the Southern District of New York, discussed above, which attempt to prevent Sassower from filing any additional vexatious lawsuits in this Court.

Plaintiff Sassower has now moved for a temporary restraining order and preliminary injunction to enjoin court security personnel at the White Plains Courthouse from carrying out the instructions of Chief Judge Brieant by barring Sassower from entering the Courthouse except for legitimate purposes. The United States Attorney's Office for the Southern District of New York has submitted opposition papers on behalf of Chief Judge Brieant and Judge Oakes who are named as defendants in this case.[4]

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[4] By letter dated January 14, 1993, the Government requested that the federal defendants have until January 29, 1993, to respond to plaintiff's application for a temporary restraining order and preliminary injunction. The Court granted that request by memorandum endorsement, dated January 19, 1993. On January 29, 1993, the federal defendants filed and served their response to plaintiff's application.

DISCUSSION

I. TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION APPLICATION

In order to prevail on a motion for a preliminary injunction, the party seeking the injunction must demonstrate: (1) irreparable harm should the relief be denied; and (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the moving party's favor. Castrol, Inc. v. Quaker State Corp., 977 F.2d 57, 62 (2d Cir. 1992); Resolution Trust Corp. v. Elman, 949 F.2d 624, 626 (2d Cir. 1991); Coca-Cola Co. v. Tropicana Products, Inc., 690 F.2d 312, 314-15 (2d Cir. 1982). The Court finds that the plaintiff has failed to set forth any evidence that would support his application for a temporary restraining order or a preliminary injunction.[5]

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[5] Plaintiff also moved for an *ex parte* restraining order. However, in order to obtain an *ex parte* restraining order under Rule 65(b) of the Federal Rules of Civil Procedure, the moving party must show immediate and irreparable harm will occur before notice can be served. Rule 65(b) states that an *ex parte* restraining order should be granted only if, *inter alia*, "it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition." Sassower has failed to make any showing as to the need for an *ex parte* order in this case and, thus, the request for *ex parte* relief is denied.

A. IRREPARABLE HARM

First, the Court finds that plaintiff has failed to make a showing of immediate and irreparable injury if an injunction is not granted allowing Sassower to enter the White Plains Courthouse. Sassower argues that he needs access to the Clerks' Offices in the Courthouse "in order to examine and photocopy certain legal papers and documents." Application for Temporary Restraining Order and Preliminary Injunction, at 2. Sassower does not identify these documents. Instead, Sassower states that, at this juncture, he "would prefer not to specifically identify the papers and/or documents that he needs for the purposes of this litigation, particularly those in the Bankruptcy Part. . . ." Declaration of George Sassower in Support of Application for Temporary Restraining Order and Preliminary Injunction, at 1.

These statements by Sassower are insufficient to make a showing of irreparable harm required for the issuance of a preliminary injunction. As the Government correctly notes, even though Sassower is denied access to the Courthouse, he is still able to obtain any bankruptcy files which he may need to inspect for purposes of his current litigation. _See_ Declaration of Kenneth Freda, dated January 28, 1993. If plaintiff is referring to documents that are contained in open case files, he may request such documents at the _Pro Se_ Clerk's Office at Foley Square and those documents will be provided to him. If plaintiff seeks documents contained in closed files, those files are not available at the White Plains Courthouse; rather, plaintiff can acquire these files from the Federal Records Center in Bayonne, New Jersey at a cost of $25.00 per file or plaintiff can travel to Bayonne to review the closed files. See Freda Declaration, at ¶¶ 5-6. Finally, if plaintiff needs access to the Courthouse to file papers or personally deliver correspondence to judges, Sassower is not harmed by the Judge Brieant's oral order prohibiting access to the Courthouse because Sassower has been enjoined by prior order, dated December 10, 1987, from filing any papers in the Southern District of New York.

Through any of the above procedures, Sassower can obtain access to any necessary court documents without entering the White Plains Courthouse. Thus, the Court finds that Sassower has not demonstrated any irreparable harm that will result if he is not allowed immediate access to the White Plains Courthouse. Accordingly, on this basis alone, the application for a temporary restraining order and preliminary injunction must be denied.

B. LIKELIHOOD OF SUCCESS ON THE MERITS

(1) Right to Inspect Judicial Records

It is well-established that the public has a common-law right to inspect and copy judicial records. See United States v. Eastern Air Lines, Inc., 923 F.2d 241, 245 (2d Cir. 1991); In re Newsday, Inc., 895 F.2d 74, 78-79 (2d Cir.), cert. denied, 496 U.S. 931 (1990). However, as the Second Circuit has noted, the right to inspect judicial records is not absolute. The decision of whether to grant access to court files "'is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.'" Eastern Air Lines, 923 F.2d at 245 (quoting Nixon v. Warner Communications, Inc., 435 U.S. 589, 599 (1978). In Nixon v. Warner Communications, the Supreme Court stated that "[e]very court has supervisory power over its own records and files, and access has been denied where court files might become a vehicle for improper purposes." 435 U.S. at 598.

In the instant case, plaintiff Sassower has a long history of using the courts for improper purposes. Sassower continued to misuse the Court system even though his conduct resulted in various disciplinary measures including: (1) numerous injunctions, see, e.g., Sassower v. Carlson, 930 F.2d 583, 584 (8th Cir. 1991); Sassower v. Sansverie, 885 F.2d at 10; (2) disbarment, see, e.g., In re Sassower, 700 F. Supp. 100, 104 (E.D.N.Y. 1988), aff'd, 875 F.2d 856 (2d Cir. 1989); and (3) criminal contempt, see In re Barr, 121 A.D.2d 324, 503 N.Y.S.2d 392 (1st Dep't 1986) (Sassower was convicted of 63 counts of criminal contempt for violating an order of disqualification and sentenced to 30 days imprisonment).

The December 10, 1987 injunction prohibiting Sassower from filing any actions without leave of Court was another attempt to prevent Sassower from abusing the Court system by filing vexatious and frivolous lawsuits. As the Second Circuit has noted, "the traditional standards for injunctive relief, i.e. irreparable injury and inadequate remedy at law, do not apply to the issuance of an injunction against a vexatious litigant." In re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984), cert. denied, 474 U.S. 1061 (1986). Instead, "[a] history of litigation entailing 'vexation, harassment and needless expense to [other parties]' and 'an unnecessary burden on the courts and their supporting personnel' is enough." Id. (quoting In re Hartford Textile Corp., 681 F.2d 895, 897 (2d Cir. 1982), cert. denied, 459 U.S. 1206 (1983)). The 1987 injunction barring Sassower from the filing of lawsuits was entirely appropriate given Sassower's history of vexatious litigation and within the sound discretion of the Court under the circumstances.

Similarly, the 1989 oral order denying Sassower access to the White Plains Courthouse was only issued after Sassower continued to disrupt the court system, despite the 1987 injunction, by refusing to follow the procedures established for pro se litigants in using the court facilities. The proper procedure for a pro se litigant wishing to file papers in this Court is to submit the papers through the Pro Se Clerk's Office at Foley Square. In addition, plaintiff can use the Pro Se Clerk's Office to obtain, examine, and copy the files he needs. There is no reason for a pro se litigant to burden the Clerk's Office in White Plains with these matters when that office is not equipped to process such papers or retrieve files. The rules and procedures of the district court with respect to pro se litigants have the force of law because they do not conflict with rules prescribed by the Supreme Court, congressional enactments, or constitutional provisions. See United

States v. Yonkers Board of Education, 747 F.2d 111, 112 (2d Cir. 1984).

There is strong evidence that Sassower had become disruptive to the effective operation of the White Plain's Courthouse. Under these circumstances, Judge Brieant's order simply compels Sassower to conduct his business with the Court through the Pro Se Clerk's Office in conformity with the rules and procedures of this Court. Thus, Judge Brieant's order barring access was in complete accordance with his duties and responsibilities as the Chief Judge to ensure the observance of the court rules and the orderly judicial processes of the Court. Sassower is not being denied access to court files, but rather simply must comply with certain reasonable procedures for obtaining such documents.

As the Second Circuit has noted, courts may take reasonable steps to prevent a vexatious litigant from disrupting the court process:

> [T]he United States Courts are not powerless to protect the public, including litigants . . .from the depredations of those . . .who abuse the process of the Courts to harass and annoy others with meritless, frivolous, vexatious or repetitive. . .proceedings.

In re Hartford Textile Corp., 659 F.2d 299, 305 (2d Cir. 1981), cert. denied, 455 U.S. 1018 (1982); see also Polur v. Raffe, 912 F.2d 52, 57 (2d Cir. 1990) ("'[t]he equity power of a court to give injunctive relief against vexatious litigation is an ancient one which has been codified in the All Writs Statute'") (quoting In re Hartford Textile Corp., 681 F.2d 895, 897 (2d Cir. 1982), cert.

denied, 459 U.S. 1206 (1983)), cert. denied, 111 S. Ct. 1389 (1991). Accordingly, the Court finds that Judge Brieant's instructions to the United States Marshal do not violate plaintiff's common-law right to inspect judicial records and plaintiff is not entitled to a temporary restraining order or a preliminary injunction on such grounds.[6]

(2) Absolutely Immunity

Plaintiff also has failed to establish likelihood of success on the merits because the underlying claims against the federal defendants, both of whom are federal judges, are barred by, inter alia, the doctrine of absolute immunity. It is well-settled that judicial officers are absolutely immune from civil liability (i.e. monetary damages) for acts undertaken pursuant to their judicial power and authority. See Mireles v. Waco, 112 S. Ct. 286, 287 (1991); Forrester v. White, 484 U.S. 219, 225-29 (1988); Butz v. Economou, 438 U.S. 478, 508-14 (1978); Stump v. Sparkman, 435 U.S. 349, 355-64 (1978).

Absolute immunity from civil liability extends to any judicial act. In assessing whether a particular act is "judicial," the Supreme Court has noted that courts look "to the nature of the act itself, i.e., whether it is a function normally performed by a

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[6] Moreover, for the reasons stated herein, the Court also finds that plaintiff Sassower has failed to raise sufficiently serious questions going to the merits of his claims to warrant injunctive relief. In addition, given Sassower's history of vexatious litigation, the balance of hardships clearly is not in his favor. Thus, he is not entitled to a preliminary injunction under that standard either.

judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Stump, 435 U.S. at 362.

In the instant case, the complaint clearly relates to acts of Chief Judge Brieant and Judge Oakes which were performed during the course of their official judicial functions. The plaintiff's complaint names these defendants for orders or decisions rendered in cases that they presided over in which Sassower was involved. More specifically, with respect to Judge Brieant, plaintiff objects to the injunction barring the filing of suits and the oral order restricting access to the White Plains Courthouse. The Court notes that even if these orders were administrative in nature, such orders are considered judicial acts that are entitled to absolute immunity from damages. See Martinez v. Winner, 771 F.2d 424, 434 (10th Cir. 1985) (Chief Judge's administrative act of assigning cases protected by absolute immunity).

Accordingly, Sassower has failed to demonstrate likelihood of success on the merits with respect to the federal defendants who are immune from a suit for damages by the doctrine of absolute immunity.

II. MOTION FOR SANCTIONS

In a motion, dated January 25, 1993, plaintiff Sassower requests an order imposing sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure against Judge Brieant, Judge Oakes, and Assistant United States Attorney Robert W. Sadowski, Esq. The basis of Sassower's motion is Mr. Sadowski's letter to the Court, dated January 14, 1993, which stated that "plaintiff is only now challenging Judge Brieant's [July 1989] order." (emphasis added). Sassower contends that this statement is false. Sassower directs the Court's attention to certain documents in which he alleges that he previously raised the issue of Judge Brieant's oral order.

The Court finds that the statement in the letter is not false or misleading in light of the current record. Moreover, the statement at issue was irrelevant to the Court's decision in this matter. Sassower's motion for Rule 11 sanctions is denied in its entirety.

CONCLUSION

For the reasons stated above, plaintiff's application for a temporary restraining order and preliminary injunction is denied in its entirety. In addition, plaintiff's motion for Rule 11 sanctions also is denied.

SO ORDERED

Dated: February 10, 1993
New York, New York

Peter K. Leisure
U.S.D.J.