

IN THE
Supreme Court of the United States

OCTOBER TERM, 1992

ELENA RUTH SASSOWER and DORIS L. SASSOWER,

Petitioners,

v.

KATHERINE M. FIELD, CURT HAEDKE, LILLY HOBBY,
WILLIAM IOLONARDI, JOANNE IOLONARDI, ROBERT
RIFKIN, individually, and as Members of the Board of Directors
of 16 Lake Street Owners, Inc., HALE APARTMENTS, DeSISTO
MANAGEMENT, INC., 16 LAKE STREET OWNERS, INC.,
ROGER ESPOSITO, individually, and as an officer of 16 Lake
Street Owners, Inc.

Respondents,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

DORIS L. SASSOWER
Petitioner Pro Se
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

ELENA RUTH SASSOWER
Petitioner Pro Se
16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 997-8105

PETITION FOR REHEARING

The central issue presented in this Petition for Rehearing¹ is inherent power. This case demonstrates the extent to which inherent power lends itself to improper purposes, specifically, retaliation.

Inherent power, as this Court recognized in Chambers v. Nasco, 111 S.Ct. 2123 (1991), poses a danger to a democratic society based on a constitutional balance of powers. Nowhere is the danger clearer and more present than in the case at bar. For such reason, in a spirit of civic duty, Petitioners again make the enormous personal investment of time and money to bring this case before this Court--lest the Second Circuit's Decision stand as a precedent for totally unrestrained use of inherent power. On its face, the Second Circuit's Decision reflects the complete abandonment of standards for invoking inherent power and for fixing fee-shifting awards thereunder (CA-14-17, Pet. at 12-13, Reply at 6).

Cognizant of the purpose of rehearing, yet wishing to provide this Court with appropriate background, Petitioners respectfully refer this Court to their Petition and Reply Brief. Those documents comprehensively detail the total lack of factual (Pet. at 22-23, Reply at 6, fn. 6) or legal basis for the Second Circuit's invocation of inherent power against them (Pet. at 16-28). They do not, however, set forth the reason why inherent power was, nonetheless, used by the Second Circuit to sustain a \$92,000 sanction award against Petitioners which could not otherwise be upheld.

The "substantial grounds for rehearing not previously presented" rest on the retaliatory motives behind the Second Circuit's invocation of inherent power. The Petition did not directly address such motivation, only alluding to it obliquely in its discussion of the denial of due process that had taken place:

¹ Petitioners, who are pro se, sought to obtain the assistance of counsel for the purposes of this Petition, but were denied an extension of time to do so. Their motion to extend their time is annexed hereto and made part hereof.

"By admission of the District Court, plaintiffs' 'bias recusal motions' formed a basis for its fee award (CA-37). Yet, there was no finding by either the District Court of the Second Circuit that such motions were false, unfounded, or made in bad faith. As this Court made clear in [Holt v. Virginia, 381 U.S. 131] at 136, the right 'to escape a biased tribunal' is itself a due process right, which may not be penalized under inherent power by a fine in reprisal for making a recusal motion grounded on judicial bias." (Pet. at 22)

Thereafter, Petitioners' Reply Brief referred to:

"...the ease with which inherent power becomes a sword to selectively and invidiously punish persons or entities associated with causes to which the court is unsympathetic, if not hostile, rather than a shield to protect the integrity of the court." (Reply at 2)

Such veiled references did not delineate the retaliatory use of inherent power--which is the ground on which this rehearing is being sought.

Even the most cursory examination of the record in the instant case establishes that the Second Circuit's invocation of inherent sanctioning power against Petitioners had nothing whatever to do with Petitioners' litigation conduct. Rather, it was motivated by the ulterior and illegitimate purpose of retaliating against Petitioners by reason of their family relationship with George Sassower.

Heretofore, Petitioners believed that this Court's recognition of the destructive potential of inherent power, as reflected in Chambers, would suffice for summary reversal of the Second Circuit's shocking Decision which, on its face, shows no identification of what conduct is being sanctioned under inherent power (CA-14-17) and maintains the arbitrary lump-sum \$92,000 sanction which the underlying District Court's Decision admits to being uncorrelated to any particular legal costs (CA-52-53, Pet. at 7, 19-21).

Mr. Sassower is referred to at fn. 1 of the Second Circuit's Decision (CA-9) and, more graphically at fn. 5 of the District Court's Decision (CA-34). Although Petitioners are not personally familiar with Mr. Sassower's lawsuits, they are generally aware that he has, for a number of years, been suing judges of the Second Circuit, describing them in unflattering and provocative terms as "criminals in black robes" and referring to the Second Circuit in inflammatory language as "unfit for human litigation".

Petitioners' recusal motions referred to the "spill over" effect of the District Judge's hostility to George Sassower onto Petitioners, as well as the Court's reliance on extrajudicial knowledge dehors the record in this case².

Petitioners sought to overcome such overt hostility of the District Judge engendered by Mr. Sassower. They prosecuted this litigation according to the highest professional standards³. Their written submissions, consistently

² Mr. Sassower was not a party to this action. However, when defendants made him an issue in the case by including him as one of their after-the-fact pretexts for their discriminatory disapproval of Petitioners' purchase of the apartment, he sought to intervene as of right under F.R.Civ.P. 24(a), as an approved occupant of the subject apartment (A-112-3). The District Court denied such right, notwithstanding that such intervention was consented to by Petitioners.

³ Petitioner Doris Sassower's familiarity with legal and judicial standards can be discerned from her listing in Martindale-Hubbell Law Directory, which, as part of the record before the District Court, is annexed to the Petition (CA-57-58).

supported by meticulously-documented evidentiary proofs and legal authority, reflect that. Nevertheless, the record shows that the District Court's decisions routinely ignored, falsified, and distorted both the facts and the law, and that the District Judge went out of his way to malign Petitioners and to make gratuitous derogatory references to George Sassower.

Such pattern continued through to the District Judge's post-trial Decision, which, in imposing a \$92,000 sanction award against Petitioners, includes invidious comparisons between Petitioner Doris Sassower and her ex-husband George Sassower as a basis for imposing sanctions (CA-42). To buttress such comparison, the District Judge then went dehors the record to quote from an unpublished judicial decision in an unrelated state court case, which palpably did not conform to judicial standards and which excerpts rested on double hearsay⁴ (Pet. at 8).

On appeal to the Second Circuit, Appellants presented the issue of the District Court's violation of judicial standards as a basis for reversal, meticulously documenting that the District Court's decision was not only unsupported by the record, but relied on hearsay and ethically-proscribed dehors the record information obtained by the Court ex parte (Pet. at 9-10). Appellants further argued that they had been further deprived of due process in that, inter alia, they had been denied a hearing as to any alleged sanctionable conduct, as well as the monetary amount of the sanctions.

⁴ Had the District Judge given due process before inclusion of such excerpts in his Decision (CA-42, CA-38-9), he would have learned that the state court decision he quoted from was under appeal and the bases included the lack of factual support for the decision, the denial of due process by the judge in that case, lack of jurisdiction, and the judge's failure to recuse himself, notwithstanding that he had an on-going political relationship with her adversary in that case, and had himself been a former adversary and professional competitor of Doris Sassower.

The Second Circuit's Decision does not identify these serious, substantive issues--all of which it dismissed summarily with the conclusory statement "We have considered all of the other issues raised by appellants and find them totally lacking in merit" (CA-18, Pet. at 11). Since the uncontroverted record before the Second Circuit established fully the truth of Petitioners' factual assertions and the validity of their legal arguments, its peremptory disposition can only be perceived as a "cover-up" of the bias of the District Court and a reflection of its own.

Such uncontroverted record included Petitioners' fully-documented Rule 60(b)(3) motion, establishing that defendants' fee applications were fraudulent and perjurious and that defendants were guilty of discovery misconduct of such prejudicial nature as entitled Petitioners to a new trial (Pet. at 27-8).

As set forth in the Petition, the Rule 60(b)(3) motion showed a deliberate pattern of flagrant discovery abuse by defendants which denied Petitioners information critical to presenting and proving their discrimination case (Pet. at 4-5, 27-8). What the Petition failed to state is that the extraordinary magnitude of defendants' discovery abuse resulted from the District Court's outright refusal to enforce the law relative to Petitioners' discovery rights. Instead, it condoned, tolerated, and thereby encouraged defendants' litigation misconduct.

That the District Judge could, thereafter, use Petitioners' uncontroverted and fully-documented Rule 60(b)(3) motion as a basis for awarding sanctions against Petitioners (CA-38, CA-53-55) shows that this was a litigation which Petitioners could not win for a reason requiring the Judge's recusal at the very outset--his pre-existing hostility to George Sassower and anyone connected with him. Such reason, likewise, required recusal of the Second Circuit. Indeed, such pre-existing hostility as the Second Circuit harbored toward George Sassower also prevented it from any fair adjudication of the issues raised by Petitioners.

Petitioners' Reply Brief (at p. 10) referred to their Rule 60(b)(3) motion as "dispositive of every issue before this Court". The deliberate mischaracterization and denigration of that motion by the District Judge (CA-53-55), then adopted in haec verba by the Second Circuit to support the astronomical monetary award against Petitioners (CA-18), becomes evident upon even the most cursory review of that 60(b)(3) motion (Pet. at 13, fn. 9).

Petitioners do not lightly make the grave charges hereinabove set forth, i.e., that the District Court and the Second Circuit deliberately abandoned ethical and legal standards in an on-going violation of their oaths of office and that inherent power furnished the tool for retaliation against Petitioners for reasons having nothing to do with their conduct of the litigation. Petitioners rest on the factual record herein and the manifest facial improprieties of the lower courts' decisions to support such charges.

Our Constitution and Bill of Rights did not contemplate that "bills of attainder" would be resurrected under the rubric of inherent power. Those sacred documents were intended to ensure that all persons would be judged on their own merits and not found guilty by association or tainted by ties of blood.

Due process and equal protection of the laws were not intended only for those that we like and admire, but also for those we hate and despise, whether such feelings are justified or not. The Petition and Reply Brief show that inherent power was here invoked, without any showing of necessity, to deny those basic constitutional rights to Petitioners.

The Petition (at p. 28) argued that use of inherent power must be "presumptively suspect" where standards of applicable statute and rule provisions had not been met. Petitioners are now putting before the Court their position that inherent power, as used in this case, is more than "presumptively suspect". It is "suspect" and unmistakably retaliatory.

Transcending the injustice done Petitioners by the Second Circuit's reliance on the undefined, amorphous concept of inherent power, rather than on black-letter law embodied in statutes and rules, is the foreseeable disintegration of our system of justice if the Decision is to stand. As eloquently articulated by Justice Frankfurter, concurring in Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 594 (1952):

"[t]he accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."

The assertion of authority by the lower courts was here not "disinterested". The circumstances of this case, with the openly adversarial relationship between George Sassower and the judges of the Second Circuit, required recusal for general and personal bias. This was essential to safeguard public confidence in the judiciary and the integrity of its adjudications (U.S. Constitution, Amendment V; 28 U.S.C. §144), since the courts' "impartiality might reasonably be questioned".

The seriousness of what this case represents requires this Court's "power of supervision". The use of judicial power for retaliatory purposes must be an anathema to our system of justice.

For the above reasons, as well as those contained in the Petition for Certiorari and the Reply Brief, Petitioners pray that this Court, in the exercise of its "power of supervision", grant rehearing, vacate the order denying same, grant the Petition, and review the Judgment and Decision below.

Respectfully submitted,



DORIS L. SASSOWER

Petitioner Pro Se

283 Soundview Avenue

White Plains, New York 10606



ELENA RUTH SASSOWER

Petitioner Pro Se

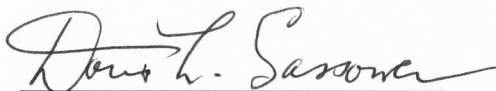
16 Lake Street

White Plains, New York 10603

May 14, 1992

CERTIFICATE OF PETITIONERS

As Petitioners herein, we hereby certify that the foregoing Petition for Rehearing is presented in accordance with the requirements of Rule 44 and is made in good faith and not for delay.



DORIS L. SASSOWER

Petitioner, Pro Se



ELENA RUTH SASSOWER

Petitioner, Pro Se

**APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR
REHEARING OF WRIT OF CERTIORARI TO THE SUPREME COURT**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit:

1. The above-named Petitioners in the within civil rights action brought under the Fair Housing Act respectfully pray for an extension of time to file their Petition for Rehearing of the Order of this Court, dated April 19, 1993, denying their Petition for a Writ of Certiorari (Ex. "A"). Said Petition for Rehearing is presently due on or before May 14, 1993. Petitioners, who are pro se, respectfully request the 60 days allowable to permit them to consult with counsel so that they can better present the "intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented".

2. The Petition for Certiorari, filed on February 22, 1993, rested on the need for review of the Second Circuit's use of inherent power to fee-shift \$92,000 litigation costs against civil right plaintiffs, after it could not sustain the District Court's identical \$92,000 award against them under the Fair Housing Act¹.

3. The Petition stated:

"Research has failed to find a single case, before or after 1988, in which a federal court has resorted to inherent power to shift a totality of litigation fees against losing civil rights plaintiffs, where, as here (CA-13), the action was found not to be "meritless" under the standards of Christiansburg."² (at 17)

4. On March 28, 1993, Petitioners moved to have their Petition held for consideration with the Petition from the Ninth Circuit in Pacific Legal Foundation v. Kayfetz, No. 92-1544--filed three weeks later. As set forth in Petitioners' motion:

¹ As detailed by the Petition (at 19), inherent power was here used by the Second Circuit "to accomplish substantive fee-shifting" (emphasis added).

² Christiansburg v. E.E.O.C., 434 U.S. 412 (1978)

"4. Both cases highlight how far the lower federal courts have carried this Court's ruling in Chambers v. Nasco, Inc., ____ U.S. ____, 111 S.Ct. 2132 (1991) in using inherent power to dispel express statutory and rule sanctioning provisions, in the absence of the required 'necessity'. Together, they demonstrate the compelling need for this Court's clarification of Chambers so as to halt the current expansion of inherent power at the expense of text-based authority.

6. Taken together, these two complementary cases represent the gamut of private enforcement of public rights: (a) by private individuals; and (b) by public interest organizations. Consequently, if the Second and Ninth Circuit decisions are permitted to stand, all future private enforcement of public rights will be affected--crippled, if not destroyed, by inherent power. Such result would plainly defeat Congressional intent."

5. Following this Court's April 19, 1993 Order denying Petitioners' aforesaid motion and their Petition for a Writ for Certiorari (Ex. "A"), Petitioners received copies of the opposing, reply, and amicus briefs filed in the Pacific Legal case, as well as the appendix therein. Based upon preliminary study of these materials, Petitioners are more convinced than ever of the value to be served by rehearing--but require additional time for that purpose.

6. In making this extension request, Petitioners respectfully draw the Court's attention to page 5 of the amicus brief filed in Pacific Legal by the NAACP Legal Defense and Educational Fund/Mexican American Legal Defense Fund, which cites Sassower v. Field as "an unwarranted expansion of Chambers" and "indicative of a growing trend to undermine the American Rule as explicated in Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240 (1975)."

7. Clearly, too, Petitioners' presentation of their motion for rehearing would be affected by whether this Court grants certiorari to Pacific Legal Foundation v. Kayfetz, which, on information and belief, has been calendared for this Court's conference on Friday, May 14, 1993--the same day on which Petitioners' Petition for Rehearing is presently due.

8. In view of the danger represented by inherent power "to undo the work of a democratically-elected Congress, as well as a duly-appointed Judicial Conference--and to do so, even without passing respect for bedrock due process principles" (Reply at 2), Petitioners' respectfully submit that the national issues presented by their Petition deserve the additional time requested.

10. Petitioners' "cert" application is most meritorious. Additionally, Petitioners intend to seek rehearing because of their good faith belief that this Court is so overburdened by its caseload that, with all due respect, the Justices of this Court could not possibly have read the Petition. Indeed, as Petitioners set forth in their Petition (at 19, 28-29) and Reply (at 9-10), the decision of the Second Circuit, on its face, reflects such departures from bedrock law of this Court and of the Second Circuit itself as to require the exercise of this Court's "power of supervision", pursuant to Rule 10.1(a) and warrant summary reversal.

11. As detailed in the Petition (at 22-3) and Reply Brief (5-6), the imposition of \$92,000 sanction award represents a total denial of due process--there being no factual support whatever in the record for the Second Circuit's Decision sought to be reviewed. No hearing was ever held to determine either liability or the amount of sanctions awarded. On its face, the underlying District Court decision reveals that the \$92,000 award against Petitioners is a completely arbitrary sum, uncorrelated to any sanctionable conduct (CA-52-3).

12. The fact that such sanction represents a complete "windfall" to the insured defendants, who were not the "real party in interest" (Pet. at 22, 27) (Reply at 7-8) shows further how far the lower courts have departed from the basic principles applicable to statutory fee awards.

13. The granting of this extension request causes no prejudice to Respondents since the \$92,000 Judgment against Petitioners is fully bonded.

WHEREFORE, Petitioners respectfully request that an Order be entered extending their time to file their Petition for Rehearing up to and including July 13, 1993.

Respectfully submitted,

Doris L. Sassower, Pro Se
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

Elena Ruth Sassower, Pro Se
16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 997-8105

May 10, 1993