ORAL ARGUMENT

Sassower, et al. v. Gannett, et al . (#2012-00126; #2012-05360)

May 6, 2013, Appellate Division, Second Department

My name is Elena Ruth Sassower. I am the first named plaintiff-appellant, *pro se* individually and acting *pro bono public* on these two important, law-making appeals of two short-form orders dated September 22, 2011 and April 23, 2012 [R-3-8; R-11]. Due solely to the attorney and judicial misconduct particularized by our appellants' brief, the other plaintiffs-appellants are currently without counsel – a state of affairs which will be resolved upon this Court's taking "appropriate action" with respect to that misconduct, as is its mandatory disciplinary responsibility pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct.

As with any case – at any level – the issues pertaining to the integrity of the proceedings are threshold – and this is highlighted throughout appellants' briefs to this Court, just as it had been highlighted throughout appellants' submissions and oral argument before the lower court.

The most threshold and overarching of the integrity issues on these appeals are those of disqualification: of the lower court judge, Suffolk County Supreme Court Justice Peter Fox Cohalan, now retired, and defense counsel, Satterlee, Stephen, Burke & Burke.

Appellants' December 21, 2011 motion [R-586-758] – the subject of their first "Question Presented" (viii) – sought Justice Cohalan's disqualification for "demonstrated actual bias and interest" in its first branch. Its accompanying memorandum of law recited the controlling legal standard:

> "Although recusal on non-statutory grounds is 'within the personal conscience of the court', a judge's denial of a motion to recuse will be reversed where the alleged 'bias or prejudice or unworthy motive' is 'shown to affect the result'" [R-751-758].

The motion proved Justice Cohalan's result-affecting bias by a 30-page analysis of his September 22, 2011 short-form order [R-639-668] detailing the factual and legal baselessness of virtually every line of its six pages [R-3-8]. The motion asserted that this actual bias was so pervasive as to suggest interest and that Justice Cohalan's duty – in the event he did not disqualify himself based on the analysis – was to respond to its factual and legal showing and disclose facts bearing upon the appearance and actuality that he was not fair and impartial [R-590-595]. To assist him in making disclosure, the motion presented eight paragraphs under the title heading "Disclosure of Relationships & Interests" [R-592-595]. [Br. 55-60].

Justice Cohalan's response to the December 21, 2011 motion – of which disqualification/disclosure was the first of seven branches of relief [R-586-587] – was his four-sentence April 23, 2012 short-form order [R-11], concealing all the facts, law, and legal argument presented by the motion, including the existence of the 30-page analysis, whose line-by-line showing was completely undenied and undisputed by him. Indeed, the April 23, 2012 short-form order did not specify the disqualification motion as other than for "bias" – not identifying "actual bias", not identifying "interest", and not identifying that it sought disclosure – of which it made none. [Br. 62-63].

As stated at Point I of appellants' brief (at pp. 68-69) – without rebuttal from respondents –

> "That Justice Cohalan's April 23, 2012 short-form order conceals that plaintiffs' motion sought his disqualification for interest – and does not deny that disqualification is warranted on that ground – leaves this Court with no choice but to disqualify him for interest, as a *matter of law*, as it cannot contest what Justice Cohalan himself does not deny or dispute.
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> Similarly, Justice Cohalan's concealment of the disclosure sought by the motion leaves this Court with no choice but to disqualify him, *as a matter of law*, as it cannot make disclosure for him of the biases, relationships and interests identified by the motion and not contested by him.
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> That Justice Cohalan's April 23, 2012 short-form order does not even purport, in conclusory fashion, that he is a fair and impartial judge only underscores what the record before this Court evidentiarily establishes: his actual bias, "affect[ing] the result", and so flagrant as to suggest interest. Such requires vacatur of his September 22, 2011 short-form order on both grounds, as likewise vacatur of his April 23, 2012 short-form order – and plaintiffs' memorandum of law in support of their [December 21, 2011] motion furnishes the controlling legal authority [R-753-754, italics in original].

Equally compelled by the record, *as a matter of law*, is the disqualification of defense counsel Satterlee, Stephens, Burke & Burke on conflict of interest grounds, because it is a party. Appellant's November 29, 2010 cross-motion [R-241-514] – the subject of their second "Question Presented" (ix)– sought Satterlee's disqualification in its forth branch, asserting that it was a defendant DOE –

> "being 'legal personnel' who, *inter alia*, received from The Journal News defendants the plaintiffs' analysis [of the news article] supporting their retraction demand and advised those defendants to ignore it. In other words, Satterlee is a defendant DOE, directly responsible for generating this lawsuit against its clients, who are here its fellow defendants." [R-509].

Satterlee has never denied this – nor its "direct interest in the subject matter of this suit" by reason thereof. Rather, both below and here Satterlee has concealed the very existence of this fourth branch – reflective that it cannot confront it, without conceding it.[1] Likewise, Justice Cohalan's September 22, 2011 short-form order concealed it.

As stated by appellants' reply brief (at p. 5):

> "Such uncontested and concealed issue below, as here (*cf.* Opp. Br.1 & fn.1, 18), of Satterlee's disqualification as a party, unable to provide unconflicted representation

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[1] Appellants' brief: p. 36, 45, 49, 53, 70; Appellants' reply brief: pp. 4-5.

of its co-defendants, presents this Court with a "*matter of law*" disqualification of Satterlee, as a threshold issue."

As highlighted by appellants' briefs[2], the record establishes that all the relief sought by their November 29, 2010 cross-motion and December 21, 2011 motion is legally compelled, including summary judgment on their four causes of action for libel, libel *per se*, journalistic fraud, and institutional reckless disregard for truth and, additionally, removal of the "ACCURACY" policy from The Journal News' masthead as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22A.

That being said – the record is for naught – as is all the law, if this tribunal is not fair and impartial. And there is more than reasonable grounds upon which this panel's impartiality must be questioned.

If this panel has examined the record underlying these appeals, it would know that the eight paragraphs of appellants' December 21, 2011 motion setting forth relationships and interests that Justice Cohalan was duty-bound to disclose if he did not disqualify himself [R-592-597] essentially all apply to this panel.

That Presiding Justice Peter Skelos has not disqualified himself and was not compelled to step down by the three other judges of this panel, notwithstanding his name appears in those paragraphs, with particularizing facts furnished by exhibits establishing his direct interest and that of his brother, Temporary Senate President Dean Skelos[3], suggests that this panel intends to disregard the issues of judicial disqualification and disclosure not only as relate to itself, but as relate to Justice Cohalan – and that it will "throw" the case by its standard perfunctory affirmance which identifies none of the appellate issues raised and none of the substantiating facts, law, or legal argument presented—beginning with the threshold and determinative issues of disqualification/disclosure and the integrity of the proceedings.

This is what a different four-judge panel of this Court did in *Sassower v. The New York Times* (AD2nd #2006-8091, #2006-10709, #2007-187), which raised appellate issues virtually identical to

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[2] Appellants' brief: pp. 1-4; 44-46; 64-68 (Point I); 69-72 (Point II); Appellants' reply brief: pp. 1-2; 3-5; 11; 32.

[3] As the exhibits also reflect, it was the judicial misconduct of Justice Skelos and his fellow Appellate Division, Second Department panelists in *McFadden v. Sassower* that propelled my opposition to the judicial pay raises and brought me into contact with Temporary Senate President Skelos. *See*:

(a) R-697-703: my March 16, 2011 letter to Justice Skelos and his fellow panelists;
(b) R-704-707: my May 13, 2011 letter to Temporary Senate President Skelos and to the other three appointing authorities of the Commission on Judicial Compensation;
(c) R-669; R670-676: my June 14, 2011 letter to this Court's then Presiding Justice Gail Prudenti, enclosing my letter of that date to then Chief Administrative Judge Ann Pfau;
(d) R-709-719: my August 23, 2011 letter to then Chief Administrative Judge Pfau;
(e) R-720-723: Executive Summary to CJA's October 27, 2011 Opposition Report addressed to Temporary Senate President Skelos and the other three appointing authorities of the Commission on Judicial Compensation.

those here presented and where the record likewise established that plaintiff-appellants were entitled to summary judgment, as *a matter of law*, on causes of action for libel, libel *per se*, journalistic fraud, and institutional reckless disregard for truth, as well as an order removing the "All the News that's Fit to Print" front-page motto as a false and misleading advertising claim.[4]

Indeed, Presiding Justice Skelos' complete disregard of the state of the record and of the trampling of statutory and rule provisions pertaining to disqualification and disclosure by lower court judges is manifested by what he did as presiding justice of another four-judge panel of this Court in *McFadden v. Sassower*[5] – the landlord-tenant case whose record establishes the corruption of White Plains City Court Judges Hansbury and Friia and the knowing falsity and defamation of the Gannett article which is the subject of these appeals.

Time does not permit further elaboration of Justice Skelos' disqualification for interest, as likewise the disqualification for interest of the other judges of this panel. Suffice to say that beyond the eight paragraphs of the December 21, 2012 motion [R-592-595] are a year and a half of subsequent events pertinent thereto. Among these, that the official misconduct of Temporary Senate President Skelos and our other highest constitutional officers of our three branches of New York State government with respect to judicial pay raises and systemic judicial corruption in cases such as *Sassower v. The New York Times*, *McFadden v. Sassower*, and this case has generated a lawsuit by the plaintiffs-appellants herein against the state, *Center for Judicial Accountability, et al. v. Cuomo, et al.*, (NY Co. #401988/2012) whose verified complaint identifies all three cases (at ¶5d) and whose named defendants include Temporary Senate President Skelos and Chief Judge Lippman. [6] Based on that lawsuit – and the further official misconduct of these and other public officers involving the judiciary appropriations bill for this fiscal year and its unidentified and unitemized judicial pay raises, plaintiffs-appellants have also filed a criminal complaint with U.S. Attorney Bharara for his investigation and prosecution of them. A copy of that April 15, 2013 criminal complaint is herein handed up for the panel[7], together with a copy of this written oral argument (and pertinent pages from appellants' December 21, 2011 motion).

cc: U.S. Attorney Preet Bharara/Southern District of New York

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[4] Appellants' brief, oral argument, and this Court's decision in *Sassower v. New York Times* are part of the record herein [R-268-340; R-341-345; R-346-347]. The entire record is posted on the Center for Judicial Accountability's website, www.judgewatch.org, accessible *via* the left side-bar panel "Suing *The New York Times*".

[5] The record of *McFadden v. Sassower* is posted on CJA's website, accessible *via* the left side-bar panel "Test Cases".

[6] The verified complaint and record of *CJA, et al. v. Cuomo, et al.* are posted on CJA's website, on a webpage entitled "CJA's People's Lawsuit against NYS' Highest Constitutional Officers and its Three Government Branches to Stop the Judicial Pay Raises and Secure Judicial Accountability", accessible *via* the top panel "Latest News".

[7] The April 15, 2013 complaint to U.S. Attorney Bharara is posted on CJA's website, on a webpage entitled "Holding Government Accountable for its Grand Larceny of the Public Fisc", accessible *via* the top panel "Latest News".