

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

----- X

ELENA RUTH SASSOWER and DORIS L. SASSOWER,
Individually and as Director and President, respectively,
of the Center for Judicial Accountability, Inc., and
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,
Acting *Pro Bono Publico*,

Plaintiffs-Appellants,

App. Div. #: 2012-00126

App. Div. #: 2012-05360

Suffolk Co. # 10-12596

-against-

GANNETT COMPANY, INC., The Journal News, LoHud.com
HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS,
D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10,

Defendants-Respondents.

APPELLANTS' BRIEF

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Acting *Pro Bono Publico*

STATEMENT PURSUANT TO CPLR §5531

1. The index number of this action in the court below is 10-12596.
2. The full names of the original parties are set forth in the caption. There have been no changes.
3. The action was commenced in the Supreme Court of the State of New York, County of Suffolk.
4. This action was commenced by plaintiffs on May 4, 2010 by their filing of a summons with notice, which they served on defendants on August 30, 2010. On September 8, 2010, Satterlee, Stephens, Burke & Burke LLP, representing all defendants except for defendant KEITH EDDINGS and defendant DOES 1-10, who never appeared, served a notice of appearance and demand for complaint. Plaintiffs served Satterlee with their verified complaint on October 4, 2010. On October 22, 2010, Satterlee served a pre-answer motion to dismiss the complaint pursuant to CPLR §§3211(a)(1) and (7).
5. This is an action for libel, libel *per se*, and journalistic fraud – with a fourth cause of action for institutional reckless disregard for truth requested in the verified complaint’s “WHEREFORE” clause. It seeks compensatory and punitive damages totaling \$50,000,000 and demands a jury trial.
6. These are two appeals from two short-form orders of now-retired Suffolk County Supreme Court Justice Peter Fox Cohalan, dated September 22, 2011 and April 23, 2012, filed in the Suffolk County Clerk’s Office on October 20, 2011 and May 1, 2012, respectively.
7. This appeal is being perfected on the original record, the appendix method is not being used.

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QUESTIONS PRESENTED

(1) Did the record of plaintiffs-appellants' December 21, 2011 motion [R-586-758] entitle them to the relief it sought, *as a matter of law?*:

- a. disqualification of Supreme Court Justice Peter Fox Cohalan for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14 and vacatur of his September 22, 2011 short-form order by reason thereof; and, if denied, disclosure of facts bearing upon his fairness and impartiality pursuant to §100.3F of the Chief Administrator's Rules;
- b. reargument/renewal of Justice Cohalan's September 22, 2011 short-form order pursuant to CPLR §2221 and, upon the granting of same, vacating it for fraud and lack of jurisdiction;
- c. vacatur of Justice Cohalan's September 22, 2011 short-form order pursuant to CPLR §5015(a)(3): "fraud, misrepresentation, or other misconduct of an adverse party";
- d. vacatur of Justice Cohalan's September 22, 2011 short-form order pursuant to CPLR §5015(a)(4): "lack of jurisdiction" by reason of his disqualification for interest;
- e. maximum costs and sanctions, pursuant to NYCRR §130-1.1 *et seq.* against defense counsel for factually and legally false oral advocacy, including her assertion that "New York law simply does not make [a] distinction [between news articles and editorials or columns]";
- f. leave to amend the verified complaint, pursuant to CPLR §3025(b) so as to made additionally explicit a fourth cause of action for institutional reckless disregard for truth;

- g. such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.

Yes. The record of plaintiffs-appellants' December 21, 2011 motion established that all such relief was legally compelled – which is why Justice Cohalan's April 23, 2012 short-form order [R-11] does not identify any of the facts, law, or legal argument the motion presented, distorts the basis for its request for his disqualification for bias, and conceals that the motion also sought his disqualification for interest, disclosure, vacatur pursuant to CPLR §5015, and leave to amend the verified complaint – all relief the April 23, 2012 short-form order does not decide.

(2) Did the record of plaintiffs-appellants' November 29, 2010 cross-motion [R-241-514] establish their entitlement to the relief it sought, *as a matter of law?*:

- a. maximum costs and sanctions against defense counsel pursuant to 22 NYCRR §130-1.1 *et seq.*;
- b. referring defense counsel to appropriate disciplinary authorities pursuant to the court's mandatory "Disciplinary Responsibilities" under the Chief Administrator's Rules Governing Judicial Conduct, 22 NYCRR §100.3D(2), for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 "Non-Meritorious Claims and Contentions", Rule 3.3 "Conduct Before A Tribunal", and Rule 8.4 "Misconduct";
- c. assessing damages against defense counsel for deceit and collusion proscribed under Judiciary Law §487(1) as a misdemeanor and entitling plaintiffs to treble damages;
- d. disqualifying defense counsel for violation of Rule 1.7 of the Rules of Professional Conduct for Attorneys "Conflict of Interest: Current Clients", as they are themselves parties, being defendant DOES;

- e. granting plaintiffs a default judgment against the non-appearing DOES 1-10 pursuant to CPLR §3215;
- f. extending plaintiffs' time to serve their Summons with Notice and Verified Complaint upon defendant Eddings pursuant to CPLR §306-b;
- g. giving notice, pursuant to CPLR §3211(c), that defendants' dismissal motion is being considered by the Court as one for summary judgment in plaintiffs' favor on their Verified Complaint's three causes of action: for libel (¶¶36-56), libel *per se* (¶¶57-64), for journalistic fraud (¶¶65-79), and on a fourth cause of action related thereto: institutional reckless disregard for truth; with additional notice, as part thereof, that the Court will be determining whether defendant Journal News should be ordered to remove from its masthead its "ACCURACY" policy as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22-A (§§349 and 350, *et seq.*);
- h. such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.

Yes. *The record of plaintiffs-appellants' November 29, 2010 cross-motion established that all such relief was legally compelled – which is why Justice Cohalan's September 22, 2011 short-form order [A-3-8], denying the cross-motion, does not identify any of the facts, law, or legal argument it presented, misrepresents such branches as it identifies so as to deny them, and conceals entirely the threshold issue presented by the cross-motion's fourth branch: disqualification of defense counsel Satterlee, Stephens, Burke & Burke, LLP for conflict of interest as a defendant DOE.*

INTRODUCTION

“[A] plaintiff's cause of action is valuable property within the generally accepted sense of that word, and, as such, it is entitled to the protections of the Constitution.”, *Link v. Wabash Railroad Co.*, 370 U.S. 626, 646 (1962), U.S. Supreme Court Justice Hugo Black writing in dissent, with Chief Justice Earl Warren concurring.

This is the consolidation of two appeals whose purpose is to enable this Court to discharge its appellate and supervisory duty under the New York State Constitution to ensure the integrity of the judicial process in the court below – wholly eviscerated by each of the short-form orders which are the subject of these appeals.

At issue are two short-form orders of now-retired Suffolk County Supreme Court Justice Peter Fox Cohalan, dated September 22, 2011 and April 23, 2012 [R-3-8, R-11], which no fair and impartial tribunal could render, as they flagrantly violate ALL cognizable legal standards and adjudicative principles to grant defendants-respondents [hereinafter “defendants”] relief to which they are not entitled, *as a matter of law*, and to deny plaintiffs-appellants [hereinafter “plaintiffs”] relief to which the law and mandatory rules of judicial conduct absolutely entitle them. Such short-form orders are, in every respect, knowing and deliberate judicial frauds and “so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause” of the United States Constitution, *Garner v.*

State of Louisiana, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). This is verifiable, readily, from the record of plaintiffs' November 29, 2010 cross-motion [R-241-585], purportedly determined by Justice Cohalan's September 22, 2011 short-form order [R-3-8], and from the record of plaintiffs' December 21, 2011 motion [R-586-834], purportedly determined by Justice Cohalan's April 23, 2012 short-form order [R-11].

New York law furnishes vital procedural safeguards to obviate the burden of appeal on a party and an appellate tribunal. Where a decision is "erroneous", a party may move for reargument, pursuant to CPLR §2221, before the judge who rendered the decision so that he may reconsider it. And where a decision is not merely "erroneous", but so factually and legally indefensible as to manifest the judge's actual bias and interest, a party may move to disqualify the judge, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, and request disclosure of facts bearing upon his fairness and impartiality, pursuant to §100.3F of the Chief Administrator's Rules. CPLR §5015, "relief from judgment or order", is yet another appeal-obviating safeguard. Similarly, to preserve a complaint from dismissal for failure to state a cause of action, a party may seek leave to replead, pursuant to CPLR §3025(b).

Plaintiffs employed these appeal-obviating safeguards by their December 21, 2011 motion [R-586-758]. Its centerpiece was a 30-page analysis of the September 22, 2011 short-form order [R-639-668], particularizing the factual and legal baselessness of virtually every line of its six pages. This analysis was incorporated by reference into an affidavit [R-589-600] swearing to its truth and setting forth facts warranting disclosure by Justice Cohalan [R-592-595], in the event he did not disqualify himself for demonstrated actual bias and interest – the first relief sought by the December 21, 2011 motion. Justice Cohalan’s response was his April 23, 2012 short-form order [R-11]. Its four sentences concealed ALL the facts, law, and legal argument presented by plaintiffs’ December 21, 2011 motion, including the analysis. Nor did it deny the motion, but only the materially-truncated and misleading relief it identified, such as disqualification for “bias”. Among the unidentified relief, disqualification for interest and disclosure, of which it made none.

Based on the record herein¹, this Court’s constitutionally-mandated appellate and supervisory duty is to not only reverse, but to vacate, the

¹ The legitimacy of judicial decisions can only be determined by comparison with the record, as recognized by the law review article, “*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*”, 73 *Albany Law Review* 1 (2009), by Gerald Caplan, to which the first sentence of plaintiffs’ 30-page analysis of Justice Cohalan’s September 22, 2011 short-form order cites and quotes in identifying the analysis as constituting a “legal autopsy” of the case” [R-639]. See, also, R-251.

appealed-from April 23, 2012 and September 22, 2011 short-form orders and grant plaintiffs all the relief to which their December 21, 2011 motion and November 29, 2010 cross-motion entitle them, *as a matter of law*, including summary judgment on their four causes of action. In so doing, this Court will be upholding and reinforcing the most basic standards of judicial and attorney conduct, trashed by Justice Cohalan and counsel representing the \$5.6 billion media defendants to conceal plaintiffs' summary judgment entitlement. It will also be making law by recognizing two new causes of action critical to safeguarding our democracy from a press which disregards its First Amendment responsibilities: journalistic fraud and institutional reckless disregard for truth. Recognizing these two causes of action, in vindication of the Public's rights, expressly represented by plaintiffs, is this Court's duty based on the facts, law, and legal argument in the record – as will be obvious to the Court upon its making findings of fact and conclusions of law, such as were not made by Justice Cohalan.

COURSE OF THE PROCEEDINGS

A. Plaintiffs' Summons with Notice [R-12-13]

On May 4, 2010, plaintiffs filed a summons with notice [R-12-13] for an action captioned:

“ELENA RUTH SASSOWER and DORIS L. SASSOWER, Individually and as Director and President, respectively, of the Center for Judicial Accountability, Inc., and CENTER FOR JUDICIAL ACCOUNTABILITY, INC., Acting *Pro Bono Publico*,

against

GANNETT COMPANY, INC., The Journal News, LoHud.com, HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS, D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10”.

Plaintiff Elena Sassower was identified as appearing *pro se* “Individually & Acting *Pro Bono Publico*”. The law firm Sarno & DeFelice, LLP, by James DeFelice, Esq., was identified as:

“Attorneys for DORIS L. SASSOWER, Individually and as President of the Center for Judicial Accountability, Inc., ELENA RUTH SASSOWER, as Director of the Center for Judicial Accountability, Inc., and CENTER FOR JUDICIAL ACCOUNTABILITY, INC., Acting Pro Bono Publico”.

The summons with notice was served upon all defendants on August 31, 2010 [R-348-352].

**B. Defendants' Notice of Appearance and Demand for Complaint
[R-14-15]**

On September 8, 2010, Satterlee, Stephens, Burke & Burke, LLP [hereinafter "Satterlee"], by Meghan Sullivan, Esq., served plaintiff Elena Sassower and counsel DeFelice with a notice of appearance and demand for complaint [R-14-15]. The appearance was on behalf of "Defendants", who it identified as:

"Defendants Gannett Company, Inc., Gannett Satellite Information Network, Inc., Henry Freeman, CynDee Royle, Bob Fredericks, and D. Scott Faubel".

In so doing, the notice asserted:

"'The Journal News' is merely a business unit of Gannett Satellite Information Network, Inc., and [] 'LoHud.com' is merely the name of a website maintained by The Journal News, such that both are improperly identified in the caption as parties to this lawsuit." [R-14].

The notice did not, however, change the caption as to defendants. Rather, and without explanation, it changed the caption as to plaintiffs, who it recast as:

"ELENA RUTH SASSOWER, DORIS L. SASSOWER, and CENTER FOR JUDICIAL ACCOUNTABILITY, INC." [R-14],

thereby removing the double capacities in which the individual plaintiffs appeared and that they and the organizational plaintiff were "Acting *Pro Bono Publico*".

As for defendants Keith Eddings and DOES 1-10, Satterlee's notice of appearance and demand for complaint gave no explanation as to why they were not among the "Defendants" for whom it was appearing. They never appeared in this action.

C. Plaintiffs' October 4, 2010 Verified Complaint [R-16-162]

On October 4, 2010, plaintiffs served their verified complaint [hereinafter "complaint"] upon Satterlee [R-16-162]. It pleaded three causes of action: libel [R-33-39], libel *per se* [R-39-41], and journalistic fraud [R-42-45] – with a fourth cause of action, institutional reckless disregard for truth, pleaded in the "WHEREFORE" clause, "to the extent warranted by the evidence adduced" [R-48]. The complaint consisted of 79 paragraphs, spanning 35 pages [R-16-50], and was buttressed by nine exhibits [R-51-162]. It sought compensatory and punitive damages of \$50 million and demanded a jury trial.

Directly beneath the complaint's caption [R-16] two quotes highlighted the First Amendment and public policy dimensions presented by the journalistic fraud and institutional reckless disregard for truth causes of action, in particular, but also bearing upon plaintiffs' libel and libel *per se* causes of action:

"The First Amendment goes beyond protection of the press...'
...it is the right of the [public], not the right of the [media]"

which is paramount,’ ...for ‘without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally,’...’, *Cohen v. Cowles Media Co.*, 501 U.S. 663, 678 (1991), Justice Souter, writing in dissent with Justices Marshall, Blackmun, and O’Connor, cited in ‘*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*’, 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1, footnotes 62 and 156 (2003).

‘Newspapers, magazines, and broadcast companies are businesses conducted for profit and often make very large ones. Like other enterprises that inflict damage in the course of performing a service highly useful to the public...they must pay the freight; and injured persons should not be relegated [to remedies which] make collection of their claims difficult or impossible unless strong public policy considerations demand.’, *Buckley v. New York Post Corp.*, 373 F.3d 175, 182 (2nd Cir. 1967), quoted in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 147 (1967).”

The complaint identified the individual plaintiffs, Elena Sassower and Doris Sassower, primarily with regard to their professional credentials, including as Co-Founders and Director and President, respectively, of plaintiff Center for Judicial Accountability, Inc. [hereinafter “plaintiff CJA”], which the complaint identified as a non-partisan, non-profit citizens’ organization whose

“patriotic purpose is to safeguard the public interest in the integrity of the processes of judicial selection and discipline, which it does by examining, investigating, and interacting with these largely behind-closed-doors processes – and providing the results, in independently-verifiable documentary form, to individuals and institutions charged with protecting the public

from corruption. Among such institutions, The Journal News and its parent entity, defendant GANNETT COMPANY, INC.” [R-22: ¶5, underlining in complaint].

The complaint detailed that prior to the events giving rise to the action, plaintiffs had chronicled a pattern and practice of knowingly false and dishonest reporting and editorializing by defendants, covering up the corruption of the processes of judicial selection and discipline, and of the judicial process itself, thwarting reform and rigging elections, which defendants accomplished by simultaneously blackballing and besmirching plaintiffs.

Defendants Gannett Company, Inc., The Journal News, and LoHud.com were described by the complaint as follows:

“6. Defendant GANNETT COMPANY, INC. [hereinafter ‘defendant GANNETT’] is a money-making business, publicly-traded on the New York Stock Exchange. Incorporated under the laws of Delaware and headquartered in Virginia, it is the nation’s largest newspaper chain, publishing more than 82 daily newspapers in the United States, including USA Today, the nation’s largest-selling daily newspaper. Additionally, it owns 23 television stations in the United States and holds substantial properties in digital media. Its 2009 revenues were \$5.6 billion.

(a) According to the 2005 law review article, *‘Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press’*, 90 Iowa Law Review 887, 890:

‘Gannett’s operating margins are lauded as ‘among the best in the industry’^[fn] The company’s proxy statement does not even mention the quality and

strength of journalism in newsrooms owned by Gannett.'

(b) Nevertheless, defendant GANNETT's 2009 Annual Report, accessible from its website, www.gannett.com, contains a title heading 'Trusted Journalism', beneath which it states 'Delivering great journalism is a Gannett hallmark'. Its website also purports that defendant GANNETT's mission is 'provid[ing] must-have news and information...ever mindful of our journalistic responsibilities' and further that:

'In 1999, Gannett's Newspaper Division issued its Principles of Ethical Conduct for Newsrooms, becoming a leader among newspaper companies in the U.S. by setting out detailed guidelines on ethics for its community newspapers.'

(c) The Journal News is defendant GANNETT's community newspaper for the suburban New York City counties of Westchester, Rockland, and Putnam. Defendant GANNETT's counsel herein, in its notice of appearance and demand for complaint, has characterized it as 'merely a business unit of Gannett Satellite Information Network, Inc.', with LoHud.com being 'merely the name of a website maintained by The Journal News' – asserting that they are 'improperly identified in the caption as parties to this lawsuit.'

(d) LoHud.com, by its own description, is a 'high-traffic web site...continuously refined and updated to serve visitor needs.' The website states that The Journal News' mission is 'to be the most credible and sought-after source of local news and information in Westchester, Rockland, and Putnam' and identifies five 'essential tenets' to 'achieve – and sustain – [this] mission'. Among them, 'honesty...by adhering to the highest standards of...journalistic practices and ethics' and 'accountability...by taking a leadership role when it comes to serving the best interests of the public'." [R-22-23].

The complaint identified that four of the five named individual defendants were managers and editors at defendant Journal News, with the fifth, defendant Keith Eddings, being the reporter who wrote the news article underlying the lawsuit [R-24-26, R-108-109].

As for the unnamed defendant DOES 1-10, the complaint described them as

“12. ...the reporters, editors, management, legal personnel, or other staff at defendant GANNETT, Journal News, and LoHud.com, who directed and/or advised defendant EDDINGS in the fashioning of his news article, including its two titles ([R-108-109]), who failed to discharge their supervisory responsibilities to enforce defendants’ own journalistic standards and who, upon receipt of plaintiffs’ analysis demonstrating the news article to be false, defamatory, and knowingly so ([R-93-159]), failed to retract it, failed to correct it, and failed to report on the issue of legitimate public concern the article had purposefully concealed: the corruption of the judicial appointments process to White Plains City Court, thereby necessitating this lawsuit.

...[and] who have collusively participated in, aided and abetted, and/or acquiesced in, defendants’ long-standing pattern and practice of journalistic fraud, willfully misleading the public as to issues of legitimate public concern, thwarting reform and rigging elections, while, simultaneously, suppressing, minimizing, and maligning plaintiffs’ corruption-exposing achievements.”

The basis for the libel and libel *per se* causes of action was defendant Eddings’ news article headlined “*Hecklers try to derail new judge*”, prominently published as news on May 6, 2009 on the top of the third page of defendant Journal News’ newspaper [R-108] and additionally posted on

its LoHud.com website, though with a different headline, “*White Plains woman heckles city judge during confirmation*” [R-109]. The news article, purporting to report on what had taken place at and after the May 4, 2009 White Plains Common Council meeting to confirm the reappointment of White Plains City Court Judge Brian Hansbury and embellished by extraneous matter serving no purpose but to buttress knowingly false facts and characterizations, was described by the complaint’s ¶14 as:

“on its face,...non-conforming with standards for news articles, *inter alia*: (a) by its disparaging characterization ‘slings and arrows’ in lieu of even a single quote of what plaintiffs ELENA and DORIS SASSOWER publicly stated; (b) by its characterization, with no attributing source, that they ‘pursued’ and ‘stepped up their pursuit’ of Judge Hansbury and his wife, upon their leaving the Council chamber; and (c) by implying that by obtaining and reporting on ‘a related decision signed by another City Court judge, JoAnn Friia, on July 3, 2008’, The Journal News had investigated – and discredited – plaintiffs’ publicly-expressed ‘alleg[ations]’ of Judge Hansbury’s ‘corruption and conflict of interest...demonstrated by his 2007 decision to evict [them]’ ([R-108-109]).” [R-27, underlining in complaint].

39 separate paragraphs of the complaint, plus the “WHEREFORE” clause, identified that the subject article was a “news article”. 21 separate paragraphs of the complaint, plus the “WHEREFORE” clause, referred to plaintiffs’ analysis of it.

The analysis [R-93-159], annexed as Exhibit 7 to the complaint and expressly incorporated therein, was a nine-page deconstruction of the

article's two titles and 11 paragraphs [R-98-107]. Prefaced by a six-page "Introduction" [R-93-98], and appending nine substantiating exhibits [R-108-159], it was written by plaintiff Elena Sassower and opened as follows:

"As hereinafter demonstrated, the article prominently featured in The Journal News' May 6, 2009 newspaper as '*Hecklers try to derail new judge*' [R-108] and on its www.lohud.com website as '*White Plains woman heckles city judge during confirmation*' [R-109] by reporter Keith Eddings is knowingly false and misleading, intentionally crafted to defame me and my mother, while simultaneously concealing the issue of legitimate public concern we sought to expose: the corruption of the judicial appointments process to White Plains City Court, as established by primary source documentary evidence.

Mr. Eddings was an eye-witness to the tail-end of that corrupted process. He observed the Common Council's May 4, 2009 regular stated meeting during which only a single candidate was nominated: incumbent White Plains City Court Judge Brian Hansbury, thereupon confirmed by a Common Council unanimous vote and sworn in by the Mayor. He also observed the citizens' half-hour preceding the meeting and heard what I and my mother stated about the earlier stages of the process.

Following our oral presentations – and before the Common Council meeting started – Mr. Eddings came up to us and we gave him, *in hand*, copies of our prior correspondence to the Mayor, Common Council and Corporation Counsel, substantiating and elaborating upon what we had publicly stated about the process and Judge Hansbury's unfitness [R-111, R-117, R-124, R-135].

The next day, May 5th, Mr. Eddings phoned me at approximately 1:30 p.m. and – in response to my question as to whether he had read the correspondence – complained it was 'all about process'. What Mr. Eddings wanted to know,

instead, was why my ‘landlord’ wanted to evict me. Despite my protest that this was irrelevant and that his story should be about ‘the process by which White Plains gets its City Court judges’ because this is what the public needed to know and what I and my mother had spoken about in the citizens’ half-hour that he had witnessed, Mr. Eddings defiantly told me that he would decide what to write as a story.

I thereupon telephoned Deputy Managing Editor Bob Fredericks, as he is listed on the lohud.com website as in charge of Westchester ‘local news’ and ‘criminal justice’^{fn}. After he confirmed that he is one of Mr. Eddings’ editors, I related to him my concerns about the story Mr. Eddings was writing. I then left a voice mail for Mr. Eddings. I also sent three e-mails to Mr. Fredericks, with copies to Mr. Eddings. [R-142, R-143, R-144].

The three e-mails are herein reproduced, as they underscore the knowing and deliberate defamation that Mr. Eddings and his editor, Mr. Fredericks, intended by The Journal News’ May 6, 2009 article and their willful cover-up of issues of legitimate public concern: the misfeasance, nonfeasance, and malfeasance of the executive and legislative branches of our White Plains City government, undermining its judicial branch with corrupt judges who use their judicial power for ulterior, retaliatory purposes.” [R-93-94].

The complaint detailed that plaintiffs furnished the analysis to the individual defendants to support their July 14, 2009 written demand for retraction of the news article and a corrective story [R-91-92] – to which defendants had not responded, even after notice that voters needed to be informed of the true facts so that they could vote out of office unworthy incumbents in the November 2009 election [R-29-32, R-160-162].

Of the complaint's 21 paragraphs pertaining to the analysis, ¶¶31-35 were among the most important. These identified that the video of the White Plains Common Council meeting, referred to in the analysis [R-98, R-99-100, R-103], corroborated the analysis in establishing the knowing falsity of the news article – as to which it furnished meter readings from the video:

“31. On September 1, 2010, in preparation for the drafting of this Verified Complaint, plaintiff ELENA SASSOWER viewed the video of the Common Council's May 4, 2009 meeting made by the White Plains Cable Television Access Commission – referred to by the analysis ([R-98, 99-100, 103]) and never previously viewed by her.

32. The video corroborates the analysis, establishing that plaintiffs ELENA and DORIS SASSOWER did not ‘heckle’ or otherwise make any ‘protest’ ‘during’ the Common Council's meeting confirming Judge Hansbury, which took place without disturbance (at 18:50 minutes).

33. The video further shows that during Reverend Carol Huston's invocation, where she says ‘White Plains is a community that cares for its people’ (at 4:54 minutes), there is no audible ‘Hummph’ from plaintiff ELENA SASSOWER, whose back is directly in front of the camera and whose face is seen when she turns around and gives an incredulous look to plaintiff DORIS SASSOWER, standing behind her. Nor is there any visible reaction from anyone reflective of a ‘Hummph’ having been heard.

34. The video also shows that immediately following the confirmation, several audience members got up to leave, as Judge Hansbury and his wife went around the council tables, shaking hands with the Council Members and Mayor. Thereafter, a disembodied voice – belonging to plaintiff ELENA SASSOWER – and emanating from the left, in the direction of the door (at 22:14 minutes) – is heard to say ‘a

corrupt judge and a corrupt process’. At that point, Judge Hansbury and his wife have not left the Council chamber, contrary to the news article.

35. The video further shows that after Judge Hansbury and his wife finish making their hand-shaking rounds and go left, leaving the Council chamber (at 22:19 – 22:22 minutes), a male figure in the front row rises and also goes left (at 22:25 minutes). Upon information and belief, it is defendant EDDINGS.” [R-32-33, underlining in the complaint].

These paragraphs ended the “Factual Allegations” section of the complaint [R-27-33]. The complaint’s first cause of action for libel immediately followed [R-33-39], identifying the evidentiary significance of the analysis and video:

“37. As demonstrated by plaintiffs’ analysis ([R-98-159]) and the video, the news article ‘*Hecklers try to derail new judge*’/‘*White Plains woman heckles city judge during confirmation*’ ([R-108, 109]) is not a ‘fair and true report’ of what took place ‘during’ the May 4, 2009 White Plains Common Council meeting – nor of what took place in the citizens’ half-hour preceding it.

(a) Such vitiates any privilege under New York Civil Rights Law §74, by its express language.^{fn}

38. Plaintiffs’ analysis ([R-98-159]) is herein repeated, reiterated, and realleged, as if more fully set forth. It establishes that the news article, by its parts and in context^{fn3}, is

^{fn3} ‘It has long been our standard in defamation actions to read published articles in context...not to isolate particular phrases but to consider the publication as a whole...’, ‘statements must first be viewed in their context...’ *Immuno v. J. Moor-Jankowski*, 77 N.Y.2d 235, 250, 254 (1991) (underlining added); ‘The entire publication...must be considered...’, *Silsdorf v. Levine*, 59 N.Y.2d 8, 13 (1983) (underlining added); ‘offending statements can only be viewed in the context of the writing as a whole, and not as disembodied words, phrases or sentences’,

knowingly false and defamatory as to plaintiffs ELENA and DORIS SASSOWER.

...

40. None of the defendants have heretofore denied or disputed the accuracy of the analysis ([R-98-159]) – including as to the express and implied facts shown to be both false and knowingly so.

41. The analysis' uncontested showing – and the referred-to readily-available primary-source documentary evidence that supports it, including the video – establish, by clear and convincing evidence, that the news article was written and published with actual malice, *to wit*, 'with knowledge that it was false or with reckless disregard of whether it was false or not', *New York Times v. Sullivan*, 376 U.S. 254, 280 (1964), *inter alia*, because defendant EDDINGS was a witness to the Common Council's May 4, 2009 meeting and to plaintiffs' public presentation in the citizens' half-hour preceding it and had, in his possession, their corroborating correspondence with the Corporation Counsel, Mayor, and Common Council ([R-111, R-117, R-124, R-135]) particularizing the readily-verifiable documentary proof establishing Judge Hansbury's corruption and that of the judicial appointments process, summarized by their presentation – of which defendant FREDERICKS had notice while the article was being written by defendant EDDINGS ([R-142, R-143, R-144]), who, likewise, had such additional notice.^{fn4}

...

44. Defendants' willful failure to retract the news article or to take other corrective steps in face of plaintiffs' analysis ([R-98-159]) further reflects their actual malice and

Gaeta v. New York News, 62 N.Y.2d 340, 349 (1984) (underlining added); '...the court will not pick out and isolate particular phrases but will consider the publication as a whole...', *James v. Gannett*, 40 N.Y.2d 415, 420 (1976) (underlining added)."

^{fn4} Such notice may be deemed as 'furnishing the necessary 'mental element'', *Curtis v. Butts*, 388 U.S. 130, 161 (fn. 23), citing *New York Times v. Sullivan*, 376 U.S. 254, 287.

common-law malice^{fn8} – as it left plaintiffs without redress except by litigation, as to which defendants have overwhelming advantage by reason of their unlimited legal and financial resources and the judicial corruption issues central to this case.” [R-33-36, underlining in the complaint].

The complaint also cited to and annexed reader comments to the news article from the LoHud.com website to establish the defamation of plaintiffs that defendants achieved [R-28: ¶¶18-19; R-39: ¶55; R-89-90]. Four of these reader comments were unfavorable, including: “This nut belongs in the loony bin, plain and simple.”; “Doris there are meds for this.”; “Here is a picture of the nutjob...and of her mother”. A single comment was favorable: “I wish more people would make their way to City hall & speak their minds. Take your Gov’t back people.” Another single comment sought more information: “Was she unavailable for comment for this article? Did she give any reasons for the things she was saying? What are the specifics?”.

The libel cause of action asserted [R-39: ¶56] that because of the permanence of the unretracted, uncorrected news article, readily-accessible from LoHud.com, the injury to plaintiffs Elena Sassower and Doris Sassower from this defamation was ongoing, as likewise to plaintiff CJA,

^{fn8} Cf., *New York Times v. Sullivan*, 376 U.S. 254, 286; Sack on Defamation: Libel, Slander & Related Problems, §11.1 (4th ed. 2010): ‘Under certain circumstances, *failure* to retract may help establish ‘actual malice...’ (italics in original).’

whose reputation, development, and finances were adversely affected by reason thereof, “with The Journal News making money by charging for such access”.

As for the second cause of action for *libel per se* [R-39-41], the complaint’s paragraphs included the following:

“58. The news article ‘*Hecklers try to derail new judge*’/‘*White Plains woman heckles city judge during confirmation*’ ([R-108, R-109]) depicts plaintiffs ELENA and DORIS SASSOWER not as CJA’s Co-Founders and its Director and President, as they publicly identified themselves to be, having – in addition to direct, personal knowledge – the professional credentials and expertise to testify, with documentary evidence, as to both the corruption of Judge Hansbury and the process of his reappointment, but, as ‘hecklers’, whose behavior was unruly, disrespectful, impertinent, argumentative, harassing, and ‘pursu[ing]’, creating a spectacle by their ‘fireworks’ and ‘slings and arrows’ – all ‘in vain’.

59. Such depictions are libelous *per se*, damaging plaintiffs ELENA and DORIS SASSOWER in their professions as Director and President of an organization whose credibility they have worked to build, as well as damaging plaintiff CJA, which draws on their credibility for its reputation, development, and funding.

...

63. The libel *per se* intended and accomplished by the news article was as to the occupation and professionalism of plaintiffs ELENA and DORIS SASSOWER as advocates and, implicitly, as to plaintiff CJA, of which they are the public embodiment.”

Annotating the complaint’s first and second causes of action for libel and libel *per se* [R-33-41] and the damages based thereon sought in the

“WHEREFORE” clause [R-46-47] was copious legal authority, cited to and quoted, to reflect that the pleaded allegations were consistent with what is requisite for successfully pleading causes of action for libel and libel *per se*.

Legal authority also annotated the complaint’s third cause of action for journalistic fraud [R-42-45]. This, in support of recognition of the journalistic fraud cause of action, as to which its annotating footnote 14 stated:

“Such proposed cause of action, designed to foster media accountability and facing no First Amendment bar, is discussed in the law review article ‘*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*’, 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1 (2003), by Professors Clay Calvert and Robert D. Richards, Co-Directors of the Pennsylvania Center for the First Amendment at the Pennsylvania State University.

That the law evolves, with new causes of action constantly emerging, is further reflected by the law review article, ‘*Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press*’, 90 Iowa Law Review, 887 (2005), proposing yet a further cause of action for media accountability.

Recognition of these causes of action is consistent with what the New York Court of Appeals articulated in *Brown v. State of New York*, 89 N.Y.2d 172, 181-182 (1996): ‘new torts are constantly being recognized’.” [R-42].

The further cause of action, institutional reckless disregard for truth, set forth in the complaint’s “WHEREFORE” clause [R-48], was similarly annotated by footnote 14.

As with the libel and libel *per se* causes of action, the journalistic fraud cause of action materially rested on plaintiffs' analysis of the news article. Among its pertinent allegations:

"66. The news article '*Hecklers try to derail new judge*/' *White Plains woman heckles city judge during confirmation*' ([R-108-109]) is a journalistic fraud, intended to mislead the public into believing that in reappointing Judge Hansbury to White Plains City Court, the executive and legislative branches of White Plains City government were properly functioning and safeguarding its welfare, when they were not ([R-111, R-117, R-124, R-135]).

67. This journalistic fraud is demonstrated by plaintiffs' analysis ([R-93-159]), summarizing not only the corruption of the process by which Judge Hansbury was reappointed to White Plains City Court, knowingly covered-up by defendant EDDINGS, but contrasting it to The Journal News' prize-winning journalism awards for 'Freedom of Information', 'Your Right to Know', and 'Let the Sun Shine In' ([R-158-159]) and editorials proclaiming 'the public's right to know about its government and its workings. Open government is essential if democracy is to thrive' ([R-146-147; R-148-150]). Indeed, plaintiff's analysis showed ([R-97-98]) that within a week of defendant EDDINGS' news article, he wrote two other Journal News articles reflective of the public's right to know ([R-152, R-153, R-157]) – with one of these ([R-152, R-153]) generating a Journal News editorial criticizing the Corporation Counsel, Mayor, and Common Council for trespassing on 'the public's right to know about public business'([R-154, R-155]).

68. Defendants' wilful failure to retract the subject news article or to correct it by any story examining the 'workings' of the process by which the Mayor and Common Council reappointed Judge Hansbury to the White Plains City Court, in face of plaintiffs' fact-specific, document-based analysis ([R-93-159]), whose accuracy they did not dispute,

underscores the willfulness of their journalistic fraud and intent to deprive the public of information ‘essential if democracy is to thrive’ ([R-146, R-148]).

69. Such journalistic fraud is all the more egregious as it not only allowed a demonstrably corrupt White Plains City Court judge – and collusive fellow judges – to continue to inflict irreparable injury upon plaintiffs and unsuspecting litigants, but allowed Common Council members who should have been turned out of office for corruption to be re-elected in the November 2009 elections.” [R-42-43].

The journalistic fraud cause of action also pivotally rested on ¶¶15-17

of the complaint, which were as follows:

“15. On the same page as the printed news article, page A-3, The Journal News provided contact information under the capitalized, bold-faced title, ‘**HOW TO REACH US**’. In capitalized, bold-face type, it listed an unnamed ‘**READERS’ REPRESENTATIVE**’ ([R-108]), stating:

‘If you have questions or concerns about anything you see in The Journal News or about our journalistic standards and practices, please contact:

Reader Services Editor
Phone 914-694-3514...’

16. On the facing page, page A-2, The Journal News masthead provided further information ([R-84]), including the following under the capitalized, bold-face title ‘**ACCURACY**’:

‘Accuracy, fairness, and balance are important to us. It is the policy of The Journal News to promptly correct errors. To report an error or clarify a story, please direct your call to the readers’ representative at 914-694-3514.’

17. This was repeated, in nearly identical language, on

LoHud.com's '**Contacts**' page under the heading 'Reader Services/Corrections' ([R-85]):

'Accuracy, fairness and balance are important to us. It is the policy of *The Journal News* to promptly correct errors. If you wish to report an error or clarify a news story, please direct your calls to the Reader Services Editor: (914) 694-3514'." [R-27-28, bold and capitalization in the complaint].

Drawing on these paragraphs, the journalistic fraud cause of action stated:

"70. The Journal News' prominently-featured policy as to '**ACCURACY**' ([R-84]) and 'Corrections' ([R-85]), purporting that 'Accuracy, fairness, and balance are important to us' and 'It is the policy of The Journal News to promptly correct errors' has exacerbated the journalist fraud of the news article by inducing the public to believe that the article was accurate, fair, and balanced – when, as demonstrated by plaintiffs' analysis ([R-93-159]), it was grossly not.

71. The Journal News' prominently-featured policy of '**ACCURACY**' and 'Corrections' ([R-84, R-85]) is itself a journalistic fraud – and so-demonstrated by defendants' writing and publishing of the news article and willful failure to retract or correct it following receipt of plaintiffs' analysis ([R-93-159]).

...

74. Upon information and belief, The Journal News ceased having a '**READERS' REPRESENTATIVE**'/'Reader Services Editor' long before the subject news article, but deliberately retained references to them in its '**ACCURACY**' and 'Corrections' policy ([R-84, R-85]) and elsewhere in its newspaper ([R-108]) and on its website to mislead readers that their interest in quality journalism was being protected.

75. The Journal News' journalistic fraud in purporting to have a non-existent '**READERS' REPRESENTATIVE**'/'Reader Services Editor' did not end

until after the news article was published when, confronted by plaintiff ELENA SASSOWER's efforts to contact the Readers' Representative and her July 14, 2009 complaint and accompanying analysis ([R-91-92; R-93-159]), The Journal News removed the references thereto from its page 2 newspaper masthead and from its website.

76. The Journal News' journalistic fraud, by its unretracted news article is not an isolated incident. Rather, it continues a pattern and practice, documented by plaintiffs' correspondence and complaints, whereby it and defendant GANNETT deliberately mislead the public as to issues of legitimate public concern, while, simultaneously, maligning and black-balling plaintiffs – each to cover up governmental corruption.

77. That The Journal News purports, editorially and by its other reporting, that it upholds 'the public's right to know about its government and its workings' and furnishes the public with information serving that end because 'Open government is essential if democracy is to thrive' ([R-146, R-148, R-154, R-155, 158-159]) only compounds this journalistic fraud.

78. Defendant GANNETT's pattern and practice of journalistic fraud was calculated to – and did – irreparably destroy the lives of the individual plaintiffs, sabotage the growth and development of plaintiff CJA, and deprive the public of countless opportunities to secure the good-government reforms that plaintiffs' dedicated advocacy consistently put within its grasp. Reform of the totally sham 'process' by which White Plains gets its City Court judges is but one example of the myriad of reforms that would have been achieved had defendants respected their First Amendment responsibilities.

79. Defendant GANNETT has long subordinated its First Amendment responsibilities to its own business and other self-interests. Defendants' writing and publishing of '*Hecklers try to derail new judge*'/'*White Plains woman heckles city judge during confirmation*' ([R-108-109]) and willful failure to retract

or correct it by any story examining the process by which Judge Hansbury was reappointed to the White Plains City Court ([R-91-92; R-93-159; R-160-161; R-162]) – the focus of plaintiffs’ evidence-based public presentation on May 4, 2009 – are illustrative.” [R-43-45, bold and capitalization in complaint].

D. Satterlee’s October 22, 2010 Pre-Answer Dismissal Motion
[R-163-240]

Satterlee did not answer plaintiffs’ complaint. Rather, by motion dated October 22, 2010, which, without explanation or legal authority, again truncated the caption as to plaintiffs, Satterlee moved to dismiss the complaint pursuant to CPLR §3211(a)(1) “a defense is founded upon documentary evidence” and CPLR §3211(a)(7) “the pleading fails to state a cause of action” [R-163-240]. The notice of motion bore the names of two attorneys, Mark Fowler and Meghan Sullivan, with the latter signing the notice [R-164]. Their names were also on the memorandum of law, also signed by attorney Sullivan [R-211-240]. Attorney Sullivan, additionally, submitted an affidavit [R-165-206], as did another attorney, Emily Smith [R-207-210]. Neither of these affidavits swore to the truth of the memorandum of law that attorney Sullivan had signed – and their sole purpose was to annex exhibits for a reason they did not identify and which did not substantiate “a defense...founded upon documentary evidence” as to either the libel causes of action or the journalistic fraud cause of action. The two exhibits Attorney Sullivan’s affidavit annexed were:

(1) the transcript of plaintiff Elena Sassower being sentenced to six months incarceration for “disruption of Congress” [R-167-191] – rather than the transcript of the alleged “disruption of Congress” incident [R-259-263], to which attorney Sullivan’s signed memorandum of law made no reference [R-246-247];

(2) the unpublished lower court decisions in *Elena Ruth Sassower v. New York Times Company* [R-192-202, R-203-206] – but not the published appellate decision of this Court [R-346-347], to which attorney Sullivan’s signed memorandum of law made no reference [R-246-249].

Attorney Smith’s affidavit annexed a single exhibit, a supposedly “true and correct copy of the Verified Complaint” [R-208-209] – which, as attorney Sullivan knew in not annexing it to her own affidavit, had been twice superseded [R-367-370, R-249-250].

Asserting that on a CPLR §3211(a)(7) dismissal motion the allegations of a complaint do not have to be accepted as true to the extent that they consist “of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence” and that “where the documentary evidence ‘resolves all factual issues as a matter of law’ dismissal should be granted pursuant to CPLR §3211(a)(1), the Satterlee memorandum purported that this was the situation at bar [R-226-227].

To advance this claim, the Satterlee memorandum concealed two of the complaint’s four causes of action – libel *per se* and institutional reckless disregard for truth – and omitted, distorted or falsified virtually all the

complaint's allegations and controlling law. By so doing, Satterlee was able to purport that the complaint itself was the "documentary evidence" for its own dismissal pursuant to CPLR §3211(a)(1) and that the article was "either not defamatory, substantially true, or constitutionally protected opinion" [R-217].

Among the material allegations of the complaint omitted by Satterlee's memorandum:

- (a) that the article was a news article – identified by 39 paragraphs of the complaint & its "WHEREFORE" clause [R-25-46: ¶¶9a, 10a, 11a, 12, 13, 14, 15, 20, 24, 34, 37, 38, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 60, 61, 62, 63, 66, 67, 68, 70, 71, 74, 75, 76];
- (b) that, on its face, the article was non-conforming with the standards of news articles – identified, with three specific examples, at ¶14 of the complaint [R-27],
- (c) that there was a video of the White Plains Common Council meeting – identified in 9 paragraphs of the complaint [R-32-38: ¶¶31-35, 37, 39, 41 53];
- (d) that the video evidentiarily established the material falsity of the news article, *inter alia*:
 - (1) that, contrary to the news article, "plaintiffs ELENA SASSOWER and DORIS SASSOWER did not 'heckle' or otherwise make any 'protest' 'during' the Common Council's meeting to confirm Judge Hansbury's confirmation, which took place without disturbance" – identified at ¶32 of the complaint [R-32];

- (2) that contrary to the news article, plaintiff Elena Sassower’s “humph” during Reverend Huston’s invocation, was more than 10 minutes before the “confirmation”, did not “interrupt” what she was saying, and was so not “loud” as to be inaudible – identified at ¶33 of the complaint [R-32];
- (3) that, contrary to the news article, plaintiffs did not “pursue” after Judge Hansbury when he left the Common Council chamber, as they left before Judge Hansbury and his wife – identified at ¶34 of the complaint [R-32-33];
- (e) that documentary evidence established the truth of what plaintiffs stated in the citizens’ half hour preceding the Common Council meeting and the material falsity of the news article, *inter alia*,
- (1) plaintiffs’ correspondence with the Mayor, Corporation Counsel, and Common Council, setting forth facts establishing the corruption of the judicial selection process, about which plaintiffs spoke – identified at ¶¶41, 48, 49, 50-52, 54 of the complaint and annexed as exhibits to their analysis [R-111, R-117, R-124, R-135, R-141];
- (2) the case file and appellate briefs transmitted to the Mayor, Corporation Counsel, and Common Council with plaintiffs’ correspondence, establishing Judge Hansbury’s “corruption and conflict of interest”, about which plaintiffs spoke – identified at ¶¶20, 48, 49, 50-52, 54 of the complaint;

(f) that the news article contained extraneous matter serving no purpose but to buttress false characterizations and false stated and implied facts – identified at ¶¶52, 54 of the complaint – and whose material falsity was itself verifiable from video and documentary evidence, identified by plaintiffs' analysis:

(1) the U.S. Senate Judiciary Committee's video of its May 22, 2003 hearing on the confirmation of Judge Richard Wesley, establishing that plaintiff Elena Sassower did not "interrupt" the confirmation hearing that gave rise to her arrest, conviction, and imprisonment for "disruption of Congress", contrary to the news article – identified by ¶60 of the complaint [R-40] and plaintiffs' analysis [R-98-99];

(2) Judge Friia's own July 3, 2008 decision, establishing that plaintiffs had not sued John McFadden in a federal lawsuit in response to eviction proceedings arising from their rejection by the "condominium board", contrary to the news article – identified by ¶60 of the complaint and plaintiffs' analysis [R-105-106];

(g) that an "ACCURACY" and "Corrections" Policy were prominently featured by The Journal News, including in its masthead and on its LoHud.com website – identified at ¶¶16-17, 70-71, 73 of the complaint ;

(h) that a "Readers' Representative" had also been featured by The Journal News and LoHud.com as the appropriate "Contact" for securing "ACCURACY" and "Corrections" until plaintiff Elena Sassower sought to contact the "Readers' Representative" for correction of the news article and discovered that

there wasn't one – identified at ¶¶15, 17, 20-21, 73-75 of the complaint;

- (i) that defendants had not responded to plaintiffs' July 14, 2009 written demand for a retraction and corrective story; had not denied or disputed the accuracy of the analysis of the news article that plaintiffs had furnished defendants in support; and had not denied the electoral impact of their failure to retract and write and publish a corrective story – identified at ¶¶25-30, 40 of the complaint;
- (j) that each of the complaint's four causes of action were buttressed by legal authority, cited to and quoted in the complaint's paragraphs and by annotating footnotes – whose accuracy and correctness Satterlee did not deny or dispute.

As for plaintiffs' analysis of the news article – the centerpiece of their complaint – Satterlee's memorandum concealed that it was an analysis and the content of virtually all of the complaint's 21 paragraphs pertaining to it, including ¶¶32-35, as to what the video shows. This enabled Satterlee to purport that the analysis, which it referred to as plaintiffs' own account of the meeting, "demonstrated that the 'gist or sting' of the article is substantially true" and "definitively demonstrates the substantial truth of the Article" [R-229], which it furthered by cherry-picking and misrepresenting fragments of the analysis and the article for an a-contextual side-by-side comparison [R-229-230] and by distorting and concealing applicable law.

As for the journalistic fraud cause of action, Satterlee's memorandum of law purported [R-239] that it was a "non-existent cause of action never recognized in New York or in any other state"; that it had been rejected by the July 6, 2006 decision of Supreme Court/Westchester County in *Sassower v. New York Times Co.*, and that such cause of action should be here rejected because plaintiffs' allegations "are uniformly without merit". In so doing, Satterlee concealed all the allegations of the complaint constituting the journalistic cause of action, including its footnote 14 of legal authority [R-42-45], and materially misrepresented the July 6, 2006 decision.

E. Plaintiffs' November 29, 2010 Opposition/Cross-Motion [R-241-514]

Plaintiffs opposed Satterlee's dismissal motion by cross-motion, dated November 29, 2010 [R-241-514], seeking the following affirmative relief:

"(1) imposing maximum costs and \$10,000 sanctions against defense counsel pursuant to 22 NYCRR §130-1.1 *et seq.*

(2) referring defense counsel to appropriate disciplinary authorities pursuant to this Court's mandatory 'Disciplinary Responsibilities' under the Chief Administrator's Rules Governing Judicial Conduct, 22 NYCRR §100.3D(2), for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions', Rule 3.3 'Conduct Before A Tribunal', and Rule 8.4 'Misconduct';

(3) assessing damages against defense counsel for deceit and collusion proscribed under Judiciary Law §487(1) as a misdemeanor and entitling plaintiffs to treble damages;

(4) disqualifying defense counsel for violation of Rule 1.7 of the Rules of Professional Conduct for Attorneys ‘Conflict of Interest: Current Clients’, as they are themselves parties, being defendant DOES;

(5) granting plaintiffs a default judgment against the non-appearing DOES 1-10 pursuant to CPLR §3215;

(6) extending plaintiffs’ time to serve their Summons with Notice and Verified Complaint upon defendant Eddings pursuant to CPLR §306-b;

(7) giving notice, pursuant to CPLR §3211(c), that defendants’ dismissal motion is being considered by the Court as one for summary judgment in plaintiffs’ favor on their Verified Complaint’s three causes of action: for libel (¶¶36-56), libel *per se* (¶¶57-64), for journalistic fraud (¶¶65-79), and on a fourth cause of action related thereto: institutional reckless disregard for truth; with additional notice, as part thereof, that the Court will be determining whether defendant Journal News should be ordered to remove from its masthead its ‘**ACCURACY**’ policy as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22-A (§§349 and 350, *et seq.*).

(8) for such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.”

In support, plaintiffs served Satterlee with a 61-page memorandum of law [R-451-514] and 13-page affidavit by plaintiff Elena Sassower [R-244-256], incorporating the memorandum of law by reference and attesting to its truth. Together, these particularized the deceit of virtually every line of

Satterlee's memorandum of law to dismiss their complaint, as well as the insufficiency and deceit of Satterlee's two non-probative attorneys' affidavits.

By way of introduction, plaintiffs' memorandum of law stated:

"As hereinafter shown, the Satterlee dismissal motion is not just frivolous, but, from beginning to end, a 'fraud on the court'^{fn1} – which would be unacceptable if perpetrated by an ordinary lawyer or party. That it has been perpetrated by a pre-eminent law firm specializing in media law ([R-442-450])^{fn}, with limitless resources on behalf of a \$5.6 billion corporate media giant ([R-23]), cannot be tolerated by any court having respect for the judicial process. Such litigation misconduct reinforces plaintiffs' entitlement to all the relief sought by their cross-motion, including summary judgment, following notice, pursuant to CPLR §3211(c).

The fundamental legal principle is as follows:

'when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.' Corpus Juris Secundum, Vol 31A, 166 (196 ed., p. 339);

'It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause...and all

^{fn1} 'Fraud on the court' is defined by Black's Law Dictionary (7th ed. 1999) as:

'A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding.'"

similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979).

The 'documentary evidence' supporting summary judgment to plaintiffs is, in the first instance, the same 'documentary evidence' on which Satterlee purports to rely for its dismissal motion: plaintiffs' Verified Complaint [R-16-162] with its incorporated Exhibit 7 analysis of the news article [R-93-159], as well as the corroborating videotape of the May 4, 2009 Common Council meeting, whose existence the Satterlee motion conceals. That videotape, a copy of which is believed to be in Satterlee's possession, as set forth at ¶¶3-4 of plaintiff Elena Sassower's accompanying affidavit [R-245], is now furnished on this cross-motion in support of summary judgment to plaintiffs ([R-258]). Also furnished: copies of the law review articles identified by the Complaint's footnote 14 for recognition of its 'Third Cause of Action: Journalistic Fraud' [R-42] – and, additionally, for recognition of a fourth cause of action: 'Institutional Reckless Disregard for Truth' ([R-48]). Like the videotape ([R-258]), whose existence Satterlee entirely conceals, its dismissal motion also entirely conceals these two law review articles ([R-371-398; R-399-441]) – because they are dispositive." [R-454-455, underlining in the memorandum].

Plaintiffs' memorandum of law then highlighted the rudimentary legal standard governing motions to dismiss for failure to state a cause of action, concealed by Satterlee [R-455-456]:

"It is well settled that on a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the pleading is

to be liberally construed, accepting all the facts as alleged in the pleading to be true and according the plaintiff the benefit of every possible inference..." *Gjobnlekaj v. Sot*, 208 AD2d 47[1] (2d Dept 2003) (underlining in plaintiffs' memorandum)

"...we accept as true each and every allegation made by plaintiff...If, upon any reasonable view of the stated facts, plaintiff would be entitled to recovery for defamation, the complaint must be deemed to sufficiently state a cause of action." *Silsdorf v. Levine*, 59 NY2d, 8, 12 (1983) (underlining in plaintiffs' memorandum)

Concealing this bedrock law was essential to Satterlee's concealment of the complaint's allegations, summed up by plaintiffs as follows:

"[Satterlee] so conceals the Complaint that it does not even identify that in addition to a 'First Cause of Action: Libel' (§§36-56), there is a 'Second Cause of Action: Libel *Per Se*' (§§57-64). Only a single paragraph of the libel *per se* 'Second Cause of Action' is cited by the motion – and that, in a footnote materially concealing its content and falsifying the law ([R-237]).^{fn4} As for the libel 'First Cause of Action', the Satterlee motion cites to only two of its paragraphs – and only passingly, without confronting their content ([R-222, R-224]). As for the 'Third Cause of Action: Journalistic Fraud' (§§65-79), none of its paragraphs are either cited or identified. The accuracy of ALL 44 of these paragraphs, comprising the Complaint's three causes of action are not denied or disputed by Satterlee – including ALL the legal authority they furnish, both in the body of those paragraphs and by their annotating footnotes.

As for the 35 paragraphs of the Complaint that precede its three causes of action, the Satterlee motion, to the extent it does cite them, materially distorts, falsifies, and omits their content. The accuracy of these, too, are all undenied and undisputed.

^{fn4} See [R-492-493]."

That the Satterlee motion is crafted on the pretense that the Complaint itself, by its incorporated Exhibit 7 analysis [R-93-159], is the ‘documentary evidence’ for its own dismissal pursuant to CPLR §3211(a)(1) is a measure of how extreme its falsification of the Complaint is.” [R-457, capitalization and underlining in plaintiffs’ memorandum].

The final ten pages of plaintiffs’ memorandum of law furnished corroborating law in support of their cross-motion branches [R-503-514].

The cross-motion’s fourth branch – to disqualify Satterlee for conflict of interest as parties, being defendant DOES – was based on Satterlee’s concealment of defendant DOES 1-10 from its dismissal motion, other than by the complaint’s caption and failure to explain why it was not representing them. As to this, plaintiffs’ memorandum of law stated [R-508-509]:

“The only explanation for Satterlee’s NOT representing these defendants DOES (and concealing that the defendants DOES, though properly served, have not appeared), is that Satterlee is among them – being ‘legal personnel’ who, *inter alia*, received from The Journal News defendants the plaintiffs’ analysis 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. Such gives it a direct interest in the subject matter of this suit....

The fraudulent dismissal motion made by Satterlee in defense of the non-DOE defendants, simultaneous with its non-representation of the DOE defendants, who it has allowed to default, reflects impaired judgment that is consistent with conflict of interest.”

As for the cross-motion's seventh branch, for summary judgment, plaintiffs' memorandum of law stated [R-511-514]:

“Plaintiffs rest on the allegations of their Verified Complaint and the legal authority cited therein and hereinabove – as well as plaintiff Elena Sassower's accompanying affidavit to support their request for a court order under CPLR §3211(c) giving notice that it is treating defendants' motion as entitling plaintiffs to summary judgment on each of their three causes of action. Indeed, the brazen fraud that pervades Satterlee's dismissal motion reinforces plaintiffs' entitlement under controlling legal principles, hereinabove quoted ([R-454-455]).

As the ‘WHEREFORE’ clause of the Verified Complaint further seeks ‘such other and further relief as may be just and proper’ ([R-48]), plaintiffs additionally request that the Court, simultaneous with its notice pursuant to CPLR §3211(c), give notice that it will determine whether defendant Journal News should be ordered to remove from its masthead its ‘**ACCURACY**’ policy as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22-A, §§349 and 350, *et seq.*

Such is eminently appropriate as the ‘**ACCURACY**’ inclusion in the masthead exacerbates and reinforces the libel and journalistic fraud committed by defendants – and the same allegations of the Complaint as support these causes of action support this additional relief. Indeed, the same law review article ‘*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*’ ([R-371-398]) as underlies the journalistic fraud cause of action identifies ([R-382]) the ‘well settled U.S. Supreme Court precedent’, from which it is clear that there is no First Amendment impediment to judicial determination that its ‘**ACCURACY**’ policy promoted on its masthead is a false and misleading advertising claim to lull consumers of the newspaper.

General Business Law, Article 22-A, §349, entitled ‘Deceptive acts and practices unlawful’, describes ‘Deceptive

acts and practices in the conduct of any business, trade or commerce in the furnishing of any service in this state'. Its subsection (h) permits 'any person who has been injured by reason of any violation...[to] bring an action in his own name to enjoin such unlawful act or practice'. Such plaintiff may recover up to \$1,000 in damages 'if the court finds the defendant willfully or knowingly violated this section' and may be awarded 'reasonable attorney's fees'. Similarly, General Business Law, Article 22-A, §350, entitled 'False advertising, unlawful', proscribes 'False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state'. Likewise, §350-d allows 'any person who has been injured by reason of any violation...[to] bring an action in his own name to enjoin such unlawful act or practice' and to recover up to \$1,000 in damages 'if the court finds the defendant willfully or knowingly violated this section' and, additionally, 'reasonable attorney's fees'.

'The genesis of both subdivision 3 of section 350-d and its companion provision, subdivision (h) of section 349 of the General Business Law, was in large measure the inability of the New York State Attorney-General to adequately police false advertising and deceptive trade practices. In a memorandum approving the enactment of both subdivision (h) of section 349 and section 350-d, Governor Carey observed that subdivision (h) of section 349 and subdivision 350-d 'by authorizing private actions, providing for a minimum damage recovery and permitting attorney's fees will encourage private enforcement of these consumer protection statutes [General Business Law §§349, 350], add a strong deterrent against deceptive business practices and supplement the activities of the Attorney General in the prosecution of consumer fraud complaints' (Governor's Approval Memorandum, NY Legis Ann, 1980, p. 147; see, also, memorandum of Senator James J. Lack, NY Legis Ann, 1980, p. 147; memorandum of

Assemblyman Harvey L. Strelzin, NY Legis Ann, 1980, p. 146.

The courts have traditionally taken an expansive view of what constitutes ‘false advertising’ (General Business Law §350-a; *Geismar v. Abraham & Straus*, 109 Misc 2d 495; Note, New York Creates a Private right of Action to Combat Consumer Fraud: Caveat Venditor, 48 *Brooklyn L Rev* 509, 545-546; *Guggenheimer v. Ginzburg*, 43 NY2d 268). In *People v Volkswagon of Amer.* (47 AD2d 868), the court in defining ‘false advertising’ observed: ‘The test is not whether the average man would be deceived. Sections 349 and 350 of the General Business Law were enacted to safeguard the ‘vast multitude which includes the ignorant, the unthinking and the credulous’ (*Floersheim v. Weinburger*, 346 F Supp 950, 957).’, *Beslity v. Manhattan Honda*, 120 Misc.2d 848, 852 (Appellate Term: 1st Dept. 1983).

As set forth at ¶6 of the Complaint, Defendant Gannett is a ‘money-making business’. The masthead of its “business unit”,^{fn} *Journal News*, purporting a policy of ‘**ACCURACY**’ – on a page reserved for news, not editorials – has no purpose but to mislead consumers that the newspaper adheres to fundamental standards of accurate, truthful journalism. As demonstrated by its willful failure to respond to appellant’s analysis – detailed by ¶¶20-30 of the Complaint [R-28-32] and concealed and falsified by Satterlee’s memo of law ([R-226]) – it does not.”

Plaintiffs’ memorandum also specified the allegations of their complaint pertinent to their fourth cause of action: institutional reckless disregard for truth, stating [R-499-501]:

“With respect to ¶¶15-17, 21, 73-75 [of the complaint] pertaining to the ‘**READERS’ REPRESENTATIVE**’ – a position intended to ensure the integrity of The Journal News’ journalism – defendant Journal News’ abolishment of that position, or at very least its failure to staff it, cannot be seen as having journalistic justification. Such decision, irrespective of whether it was failure to staff or abolition of the position, may be presumed to be financially-driven, impelled by a desire to increase defendant Gannett’s renowned profit margin^{fn}. As such, this case is perfect for recognizing the cause of action proposed by the law review article ‘*Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press*’ ([R-399-441]), additionally referred-to in the Complaint’s footnote 14 [R-42].

...

The Complaint’s ‘WHEREFORE’ clause ([R-48]) expressly seeks ‘assessment of...damages as part of a cause of action for Institutional Reckless Disregard for Truth, to the extent warranted by the evidence adduced’ as part of its ‘other and further relief as may be just and proper’ – citing to the Complaint’s footnote 14 in support thereof.

Satterlee’s failure to address the Complaint’s suggested recognition of a cause of action for Institutional Reckless Disregard for Truth, combined with its obliteration of the allegations of the Complaint pertaining to the ‘**READERS’ REPRESENTATIVE**’ that would be its essence, gives rise to the inference that Satterlee has no defense thereto.”

F. Satterlee’s December 8, 2010 Reply in Further Support of its Dismissal Motion [R-515-538]

On December 8, 2010, Satterlee served its reply in further support of its dismissal motion [R-515-538], continuing to truncate the caption as to plaintiffs. It consisted of a 15-page memorandum of law [R-520-538], signed by attorney Sullivan, a four-sentence affidavit by her [R-515-516],

which did not attest to the truth of the reply memorandum and whose sole purpose was to annex an e-mail she had sent to plaintiffs concerning the absence of attorney DeFelice's signature from plaintiffs' opposition/cross-motion, and a three-sentence affidavit by the Director of Employee Relations at defendant Journal News [R-518-519] stating only that defendant Eddings had not been employed by The Journal News since August 28, 2009, but nothing about his employment with Gannett.

Much as Satterlee's dismissal memorandum of law had falsified and concealed virtually the entire content of plaintiffs' complaint, so now its reply memorandum of law falsified and concealed virtually the entire content of plaintiffs' opposition/cross-motion memorandum. This enabled it to assert that plaintiffs had failed to make "any substantive rebuttal of the arguments set forth in Defendants' motion." [R-525]" and had failed to demonstrate that that their claims "are even remotely meritorious" [R-534]. In keeping therewith, Satterlee continued to purport: "Exhibit 7 To The Complaint Corroborates The Article's Account Of The Meeting In All Material Respects" [R-526], that it "substantially mirrors" [R-525]; that it "admit[s] the substantial truth of the Article's account"; and "confirms that the 'gist or sting' of the Article is 'substantially true'" [R-527].

According to Satterlee, plaintiffs' opposition memorandum of law had been "Unable to quarrel with the substantial similarity between the events as described in the Article and their own account of those events" [R-527]; and "Unable to point to any false and defamatory statements of fact", other than "trivially insisting that the Sassowers' protest occurred not 'during' Judge Hansbury's confirmation, but in the 'citizens' half hour' preceding the Meeting" [R-525] – as to which it asserted that this was only a "minuscule purported discrep[an]c[y]"; a "convenient perception" [R-527], "a feeble attempt to parse the meaning of the term 'during'" [R-528], indeed, the ONLY discrepancy, thereby making the article "substantially true" [R-528].

As for the video, concealed by Satterlee's dismissal motion, Satterlee now claimed that it "provide[d] additional confirmation of the substantial truth of the Article" [R-528], for which it rested on ambiguous and deceitful assertions in support [R-528-529].

Turning to the journalistic fraud cause of action, Satterlee repeated the argument from its dismissal motion, without denying or disputing the accuracy of plaintiffs' detailed refutation of those arguments [R-494-499] and again entirely concealed the further cause of action for institutional reckless disregard for truth [R-499-501]. Satterlee's only response to plaintiffs' assertion that the law review articles annotating that cause of

action were “dispositive” was to deride them as “speculative writings”, which it did by a footnote, at the end of its memorandum [R-537].

G. Plaintiffs’ December 15, 2010 Reply in Further Support of their Cross-Motion [R-539-585]

On December 15, 2010, plaintiffs served a 41-page reply memorandum of law [R-542-585], detailing the deceit of virtually every line of Satterlee’s reply memorandum and the insufficiency and deceit of the two non-probative affidavits that had accompanied it. A four-paragraph reply affidavit of plaintiff Elena Sassower [R-539-541] swore to the truth of plaintiffs’ reply memorandum of law, also stating that “fully-executed signature pages” for plaintiffs’ opposition/cross-motion would be supplied “before oral argument is had on defendants’ dismissal motion and plaintiffs’ cross-motion and that the delay was:

“attributable directly to Satterlee’s litigation misconduct, which has caused unexpected problems and difficulties for Mr. DeFelice in his representation of multiple plaintiffs.” [R-539-540].

As to this “litigation misconduct”, the introduction to plaintiffs’ reply memorandum stated:

“As hereinafter demonstrated Satterlee’s mistitled December 8, 2010 reply memorandum is no less a ‘fraud on the court’ than its October 22, 2010 dismissal motion, whose pervasive fraud and deceit, both as to fact and law, were particularized by plaintiffs’ exhaustive November 29, 2010 opposition/cross-motion – and the basis for its eight branches of cross-motion

relief, including disqualification of Satterlee as a defendant DOE and summary judgment in plaintiffs' favor. ...

It is simply impossible to litigate – and for this Court to properly adjudicate – when the judicial forum is, as here, flooded with falsehood. Consequently, the threshold issue before this Court is the integrity of these proceedings and fundamental litigation standards. The statutory and rule provisions invoked by plaintiffs' cross motion – NYCRR §130-1.1, *et seq.*, Judiciary Law §487, and §100.3(D)(2) of the Chief Administrator's Rules Governing Judicial Conduct – provide the Court with the means and obligation to protect itself and plaintiffs from abuse. Such is not ancillary to a 'merits' determination of defendants' dismissal motion and plaintiffs' cross-motion for summary judgment, but preliminary to it and a component thereof. ...

Inasmuch as 22 NYCRR §130-1.2 was amended to enable the Court to impose \$10,000 sanctions for each 'single occurrence of frivolous conduct', this memorandum of law is expressly submitted in support of plaintiffs' request herein for imposition of additional \$10,000 sanctions against Satterlee, with an additional award of maximum costs to plaintiffs, as well as further treble damages under Judiciary Law §487, based on Satterlee's further frivolous and fraudulent conduct by its December 8, 2010 memorandum of law, as hereinafter demonstrated. Such demonstration reinforces plaintiffs' entitlement to all the relief sought by their cross-motion – including the fourth and seventh branches that Satterlee conceals:

'(4) disqualifying defense counsel...as they are themselves parties, being defendant DOES;

...

(7) giving notice, pursuant to CPLR §3211(c), that defendants' dismissal motion is being considered by the Court as one for summary judgment in plaintiffs' favor...'

Indeed, as hereinafter demonstrated, Satterlee's so-called 'reply' memorandum of law, which conceals virtually the entire

content of plaintiffs' opposition/cross-motion, is, NO OPPOSITION, *as a matter of law*, to any of plaintiffs' eight branches of cross-motion relief." [R-545-547, underlining, bold, capitalization, and italics in reply memorandum].

As to the cross-motion's fourth branch to disqualify Satterlee – completely unopposed and concealed by Satterlee – plaintiffs summed up the evidence as follows:

"So plainly correct is plaintiffs' assessment that Satterlee is a defendant DOE that Satterlee's 'reply' dismissal memo entirely conceals that plaintiffs' cross-motion seeks its disqualification as a defendant DOE, nowhere denies that it is one, does not explain why it is not representing the defendant DOES, and does not account for why its dismissal motion makes no mention of them.^{fn} As such, *as a matter of law*, Satterlee concedes the truth that it is a defendant DOE – and, based on the legal authority quoted by plaintiffs' opposition/cross-motion memo ([R-507-508]), without challenge from Satterlee, plaintiffs are entitled to its disqualification, *as a matter of law*. (See [R-575-576])." [R-554, underlining in reply memorandum].

As for the seventh branch, for summary judgment – likewise concealed and unopposed by Satterlee – plaintiffs summarized the evidence as follows:

"...Satterlee's 'reply' memo of law totally conceals and ignores the summary judgment branch of plaintiffs' cross-motion – presumably because interposing opposition to it, as likewise to the cross-motion branch to disqualify Satterlee as a defendant DOE – would require it to come forward with sworn statements. Apparently, neither Satterlee nor its co-defendants are willing to swear under penalties of perjury to the evidence which plaintiffs' opposition/cross-motion memo so prominently

identified as entitling them to summary judgment ‘in the first instance’:

(1) **plaintiffs’ Verified Complaint** [R-16-162], whose under penalties of perjury allegations, included...

(2) **the video** of the May 4, 2009 Common Council meeting ([R-258]);

(3) **the two law review articles** supporting the Complaint’s two proposed causes of action for ‘journalistic fraud’ and ‘institutional reckless disregard of the truth’ [R-371, R-399]:

...

Suffice to say, that as to these two law review articles, Satterlee’s ‘reply’ dismissal memo conceals them almost as totally as its dismissal memo had – relegating reference to them to its footnote 6 [R-537], without identifying their titles, authors, or the publications in which they appeared, baldly purporting they are ‘merely speculative writings’. As highlighted by ¶¶31-32 of plaintiff Elena Sassower’s affidavit [R-255], ‘Satterlee has all the expertise and resources to have provided the Court with a fully responsive brief on behalf of its \$5.6 billion corporate client’ with respect to the argument and legal authorities these law review articles advance in support of the two proposed causes of action for journalistic fraud and institutional reckless disregard for the truth.” [R-582-583, bold and underlining in reply memorandum].

H. Plaintiffs’ January 5, 2011 Letter to Justice Cohalan [R-724-743]

By letter to Justice Cohalan, dated January 5, 2011 [R-724-743], plaintiff Elena Sassower advised that because of the serious and substantial relief sought by plaintiffs’ opposition/cross-motion papers – “all fully documented” – plaintiffs had withheld filing them to afford Satterlee the

opportunity to meet its duty to the Court and professional responsibilities under New York's Rules of Professional Conduct by withdrawing its dismissal motion and initiating settlement discussions. The letter related Satterlee's response, by attorneys Sullivan and Fowler, as so further violative of their professional responsibilities as to have compelled plaintiff Elena Sassower to inquire whether it had been authorized by Satterlee attorneys in supervisory and managerial positions pursuant to Rule 5.1 of New York's Rules of Professional Conduct: "Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers". Attorneys Sullivan and Fowler refused to respond and refused to give plaintiff Elena Sassower the names of such supervisory, managerial attorneys at Satterlee so that she might contact them directly. Likewise, Satterlee's office manager had refused to provide the names – and, though stating she would relay plaintiffs' request for supervisory oversight, had hung up the phone while plaintiff Elena Sassower was explaining Satterlee's disqualification as a defendant DOE.

The letter therefore stated that absent Satterlee's prompt notification to Justice Cohalan that it is withdrawing its dismissal motion, plaintiffs were requesting that he deem the second branch of their cross-motion: to refer Satterlee to disciplinary authorities for its knowing and deliberate violation

of three separate rules of New York's Rules of Professional Conduct to include its knowing and deliberate violation of a fourth rule: Rule 5.1 "Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers".

The letter concluded by reiterating that Satterlee's litigation misconduct had "created unexpected problems and difficulties for Mr. DeFelice in his representation of multiple plaintiffs", but that plaintiffs' notice of cross-motion and two memoranda of law would be fully executed by signature of counsel before the date of oral argument.

By letter dated May 3, 2011 [R-744-746], plaintiff Elena Sassower advised that attorney DeFelice would be signing the cross-motion papers in court at the oral argument scheduled the next day. Shortly, thereafter, Justice Cohalan's chambers advised that the oral argument would be put over to June 1, 2011 [R-597, ¶19].

I. The June 1, 2011 Oral Argument on Satterlee's Motion & Plaintiffs' Cross-Motion [R-609-638]

On June 1, 2011, Justice Cohalan held oral argument on defendants' dismissal motion and plaintiffs' cross-motion [R-609-638]. Plaintiff Elena Sassower argued for herself and the public interest. Attorney DeFelice, who was beside her, argued on behalf of plaintiffs Doris Sassower and CJA.

They presented the following directly to Justice Cohalan at that time – reiterating what was before him in the record:

- (1) that the threshold issue before him was Satterlee’s disqualification as a defendant DOE – the subject of the fourth branch of their cross-motion and “completely unopposed, undenied, undisputed” by Satterlee [R-613-615];
- (2) that Satterlee’s dismissal motion “conceals, distorts, falsifies the allegations of the complaint” [R-615-623, R-627], and, specifically:
 - i. that it concealed the existence of the video and that it substantiated the complaint’s analysis that plaintiffs were completely silent “during” Judge Hansbury’s confirmation;
 - ii. that it falsely purported that the complaint and analysis “corroborate[] the article” – and were the “documentary evidence” for dismissing the complaint;
 - iii. that it concealed the complaint’s libel *per se* cause of action, including by altering the caption to make it appear that plaintiffs were suing only in a single capacity;
 - iv. that it concealed all the complaint’s allegations germane to the journalistic fraud cause of action, as, for instance, the **“READERS’ REPRESENTATIVE”** and **“ACCURACY”/Corrections Policy**, and misrepresenting that there had been a response to plaintiffs’ retraction demand.

- (3) that the subject article was a “news article” and, as such, “not one in which a reporter’s opinion is supposed to appear. It is reserved for fact” [R-617-618];
- (4) that the article “on its face, does not comport with the standards of news articles” [R-617];
- (5) that the summary judgment seventh branch of plaintiffs’ cross-motion included “a request that the Journal News be ordered to remove from its masthead its accuracy policy because it is a false and misleading advertising claim, in violation of public policy, including General Business Law Article 22(a)” [R-621-622];
- (6) that a cause of action for libel includes not only what is printed, but what is left out, and specifically identifying this Court’s 2007 decision in *Matovcik v. Times Beacon Record Newspapers*, 46 AD3d 636 [R-628-629].

Attorney Sullivan appeared for Satterlee and repeated deceptions already exposed by plaintiffs’ opposition/cross-motion papers, including:

- that it was “difficult to tell...from...the complaint what exactly in the article the plaintiff’s complained about.” [R-631];
- that “plaintiff’s claim fails because the complaint itself, specifically Exhibit 7 to the complaint, is an analysis that...established that the gist or [sting] of the article is substantially true” [R-633];
- that “the language” in the article that plaintiffs claim is defamatory” is: “heckling”, “slings and arrows”, and “fireworks” [R-632] and that “all of the statements, complained of by plaintiffs” are “figurative expression[s]” and “not factual statements” [R-634];

- that plaintiffs' lawsuit against The New York Times was "strikingly similar" [R-636].

In response to Justice Cohalan's question, "Do you think it's proper for a reporter to use figurative statements in a news story, as opposed to an analysis for a news column?" [R-634], attorney Sullivan purported:

"New York law simply does not make [a] distinction [between news articles and editorials or columns]" [R-635]; and

"Miss Sassower, her position is that the distinction between editorial and news articles is, it is a fiction, it is not true, and Miss Sassower should be aware that it's not true." [R-636].

Justice Cohalan refused to allow plaintiff Elena Sassower to be heard in rebuttal, either orally or by submission, and called for the stenographer to end her transcription with the words "Off the record. Off the record" [R-637], thereupon hurrying off the bench [R-597].

J. Justice Cohalan's September 22, 2011 Short-Form Order [R-3-8]

By short-form order dated September 22, 2011 [R-3-8], which changed the caption of the action identically to how Satterlee had, Justice Cohalan granted its motion to dismiss plaintiffs' complaint for failure to state a cause of action, pursuant to CPLR §3211(a)(7), and denied plaintiffs' cross-motion, in its entirety. To accomplish this, the short-form order concealed, distorted, and falsified all the facts, law, and legal argument presented by plaintiffs' complaint, cross-motion, and June 1, 2011 oral

argument – replicating, even more egregiously, Satterlee’s concealment, distortions, and falsifications that were the subject of plaintiffs’ opposition/cross-motion and June 1, 2011 advocacy. Thus, notwithstanding the short-form order devoted a full paragraph to reciting the governing standard for motions to dismiss for failure to state a cause of action:

“Pursuant to CPLR §3211(a)(7), pleadings shall be liberally construed, the facts as alleged accepted as true, and every possible favorable inference given to plaintiffs (*Leon v Martinez*, 84 NY2d 83, 614 NYS2d 972 [1994]). On such a motion, the Court is limited to examining the pleading to determine whether it states a cause of action (*Guggenheimer v Ginzburg*, 43 NY2d 268, 401 NYS2d 182 [1997]). In examining the sufficiency of the pleading, the Court must accept the facts alleged therein as true and interpret them in the light most favorable to the plaintiff (*Pacific Carlton Development Corp. v 752 Pacific, LLC*, 62 AD3d 677, 878 NYS2d 41 [2d Dept 2009]; *Gjonlekaj v Sot*, 308 AD2d 471, 764 NYS2d 278 [2d Dept 2003]). On such a motion, the Court’s sole inquiry is whether the facts alleged in the complaint fit within any cognizable legal theory, not whether there is evidentiary support for the complaint (*Leon v. Martinez*, *supra*; *International Oil Field Supply Services Corp. v Fadeyi*, 35 AD3d 372, 825 NYS2d 730 [2d Dept 2006]; *Thomas McGee v City of Rensselaer*, 174 Misc2d 491, 663 NYS2d 949 [Sup Ct, Rensselaer County 1997]). Upon a motion to dismiss, a pleading will be liberally construed and such motion will not be granted unless the moving papers conclusively establish that no cause of action exists (*Chan Ming v Chui Pak Hoi et al*, 163 AD2d 268, 558 NYS2d 546 [1st Dept 1990]).” [R-4, bold and underlining in short-form order],

it concealed [at R-4] ALL the paragraphs of the complaint, except for a transmogrification of ¶14 [R-27]. Thus, concealed were ALL the

complaint's allegations stating and establishing plaintiffs' causes of action. Among these, those pertaining to the video, plaintiffs' analysis and the documentary evidence which it annexed and to which it referred establishing the article's falsity, defendant Journal News' "**ACCURACY**"/"Corrections" policies and "**READERS' REPRESENTATIVE**", plaintiffs' written demands for a retraction and corrective story, defendants' willful failure to respond.

Indeed, as plaintiffs had directly alerted Justice Cohalan to so many of these material allegations at the June 1, 2011 oral argument, together with the threshold issue before him of Satterlee's disqualification as a defendant DOE, the short-form order purported that no oral argument had been held [R-3] and omitted any mention of the issue of Satterlee's disqualification – the fourth branch of plaintiffs' cross-motion [R-242]. This concealment of the oral argument, at which attorney DeFelice had argued [R-609], was also essential to a further deceit: that Satterlee's dismissal motion was unopposed by plaintiffs Doris L. Sassower and CJA [R-4].

As for plaintiffs' proposed cause of action for institutional reckless disregard for truth, Justice Cohalan purported, in a footnote and without explanation, that plaintiffs had "not assert[ed] a cause of action based

[thereon] and the matter is not before this Court” [R-7]. As for journalistic fraud, it concealed that “new torts are constantly being recognized”.

Of the first four branches of plaintiffs’ cross-motion pertaining to Satterlee, Justice Cohalan identified only the first – 22 NYCRR §130-1.1 sanctions. Concealing this branch was based, primarily, on Satterlee’s concealment, distortion, and falsification of plaintiffs’ complaint and the governing law, his short-form order purported that its basis was Satterlee’s submission of:

“affidavits which contain false and misleading exhibits and a memorandum of law which includes ‘false and deceitful decisions which besmirch plaintiffs and mislead the Court”.

As to this, Justice Cohalan baldly asserted:

“Based on the record herein, the Court finds the affidavits and memorandum to be well within the bounds of legitimate advocacy on the part of defendants’ counsel. The Court finds this branch of E.R Sassower’s cross-motion is without merit.” [R-8].

As for plaintiffs’ summary judgment branch of their cross-motion [R-242], Justice Cohalan gave no particulars of its summary judgment request [R-3], no exposition of the state of the record with respect thereto, and no reason for denying it [R-8].

K. Plaintiffs' December 21, 2011 Motion for Disqualification/Disclosure, Vacatur, Reargument/Renewal & Other Relief [R-586-758]

On December 21, 2011, plaintiffs made a motion seeking the following relief:

“1. disqualifying Supreme Court Justice Peter Fox Cohalan for demonstrated actual bias and interest, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, and vacating his September 22, 2011 short-form order by reason thereof for fraud and lack of jurisdiction; and, if denied, disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon his fairness and impartiality;

2. granting reargument and renewal, pursuant to CPLR §2221, of the Court's September 22, 2011 short-form order and, upon the granting of same, vacating it for fraud and lack of jurisdiction;

3. vacating the September 22, 2011 short-form order, pursuant to CPLR §5015(a)(3) for ‘fraud, misrepresentation, or other misconduct of an adverse party’;

4. vacating the September 22, 2011 short-form order, pursuant to CPLR §5015(a)(4) for ‘lack of jurisdiction’, by reason of the Court's disqualification for interest;

5. imposing maximum costs and \$10,000 sanctions, pursuant to NYCRR §130-1.1 *et seq.* against Meghan Sullivan, Esq., personally, and her law firm Satterlee Stephens Burke & Burke, LLP, for her factually and legally false advocacy at the June 1, 2011 oral argument, including her assertions that ‘New York law simply does not make [a] distinction [between news articles and editorials or columns]’ and that ‘Miss Sassower, her position is that the distinction between editorial and news articles is, it is a fiction, it is not true, and Miss Sassower should be aware that it's not true’;

6. leave to amend the Verified Complaint, pursuant to CPLR §3025(b) so as to made additionally explicit a fourth cause of action for institutional reckless disregard for truth;

7. granting such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.” [R-586-587, underlining in notice of motion].

The centerpiece of plaintiffs’ motion, demonstrating their entitlement to all the relief sought, was a 30-page analysis of Justice Cohalan’s September 22, 2011 short-form order, examining it, virtually line-by-line [R-639-668]. Written by plaintiff Elena Sassower and annexed as Exhibit 23 to her 11-page moving affidavit, she swore to its truth [R-590], and provided a synopsis of its content, stating:

“4. The analysis demonstrates that no fair and impartial tribunal could render the September 22, 2011 decision as it brazenly disregards and distorts the controlling legal standards it recites and flagrantly falsifies and conceals the factual and evidentiary record before the Court, as for example:

- without explanation or legal authority, changing the caption of the action to remove the double capacities in which the individual plaintiffs appear – germane to their libel *per se* cause of action – and removing that the action is being brought by them and the corporate plaintiff *pro bono publico* – germane to their journalistic fraud cause of action;
- misrepresenting the defendants who Satterlee represents and on whose behalf its dismissal motion has been made – germane, *inter alia*, to the uncontested fourth branch of plaintiffs’ cross-motion to disqualify Satterlee for conflict of interest as a defendant DOE;

- purporting, without explanation, that no oral argument was had on Satterlee's dismissal motion – germane to its misrepresentation that “The motion was unopposed by D.L. Sassower and the plaintiff Center for Judicial Accountability, Inc.”;
- making no determination as to the sufficiency of Satterlee's dismissal motion, either for its requested dismissal of plaintiffs' Complaint pursuant to CPLR §3211(a)(1), ‘defense founded on documentary evidence’, or for its requested dismissal of the Complaint pursuant to CPLR §3211(a)(7), ‘failure to state a cause of action’;
- concealing the reason for not granting Satterlee's motion pursuant to CPLR §3211(a)(1) for a ‘defense founded on documentary evidence’, *to wit*, because the purported ‘documentary evidence’ – the Complaint and its Exhibit 7 analysis – establish the fraudulence of Satterlee's motion as to both CPLR §3211(a)(1) and CPLR §3211(a)(7);
- concealing virtually every allegation of plaintiffs' Complaint, in violation of black-letter law, which it recites, as to the standard governing dismissal for failure to state a cause of action – and concealing all the allegations highlighted by plaintiffs' cross-motion and oral argument as establishing the Complaint's causes of action, including: (i) that the subject article is a news article; (ii) that, on its face, it was non-conforming with the standards of news articles; (iii) that its knowing falsity is established by a video; (iv) that notwithstanding defendant Gannett purported to have an ‘**ACCURACY**’/corrections policy – including as part of its masthead – it ignored, without response, plaintiffs' analysis particularizing the article's falsity and knowing falsity; and (v) that despite defendant Gannett's purporting to have a ‘**READERS' REPRESENTATIVE**’ – including as

part of its masthead – it had none;

- misrepresenting the law as to opinion, including as set forth by *Steinhilber v. Alphonse*, 68 NY2d 283 (1986), on which it purports to rely;
- purporting to apply the four-factor *Steinhilber* analysis by conclusory assertions devoid of a single demonstrative fact, with responses to two of the four factors being, additionally, non-responsive;
- purporting, as part of its *Steinhilber* analysis, that ‘No evidence has been submitted to establish that the statements [in the article] were false when made’, when the evidence submitted by plaintiffs was overwhelming, including: (i) their Complaint, which the decision conceals was verified; (ii) the Complaint’s incorporated Exhibit 7 analysis, wholly concealed by the decision; and (iii) the video, wholly concealed by the decision – and when ‘evidence’ is not the standard on a motion to dismiss for failure to state a cause of action, as the decision elsewhere acknowledges;
- misrepresenting the law as to ‘special damages’, including as set forth by *Matherson v. Marchello*, 473 NYS2d 998 (2nd Dept. 1984), to which it cites three times;
- concealing the legal proposition ‘new torts are constantly being recognized’, enunciated in *Brown v. State of New York*, 89 NY2d 172, 181-192 (1996) and set forth in the Complaint itself, so as to purport, as its sole basis for dismissing plaintiffs’ cause of action for journalistic fraud, that ‘the Court is unable to find a single jurisdiction that recognizes a cause of action for journalistic fraud’, which the record before the Court showed to be a legally-insufficient ground;

- baldly purporting, without fact or law – and relegated to a footnote – that plaintiffs’ Complaint does not ‘assert’ a cause of action for ‘institutional reckless disregard of the truth’ in defamation actions’;
- denying plaintiffs’ eight-branch cross-motion by falsifying the basis of the single branch whose grounds it purports to give – the first branch: ‘imposing sanctions pursuant to 130-1.1’ against Satterlee – and concealing, as to the three additional cross-motion branches against Satterlee, the ‘various relief’ they sought, *to wit*, the second branch: referral of Satterlee to disciplinary authorities; the third branch, assessing damages against Satterlee under Judiciary Law §487(1); and the fourth branch, to disqualify Satterlee – over and beyond concealing all the facts, law, and legal argument the cross-motion presented in support of those branches, as well as in support of the other branches, including the seventh branch: for summary judgment to plaintiffs.” [R-590-592].

The affidavit then continued under the title heading: “DISCLOSURE OF RELATIONSHIPS AND INTERESTS” [R-592-595], setting forth three pages of particulars of what should be disclosed, introduced as follows:

“5. Should the Court not disqualify itself and vacate its September 22, 2011 decision based on the analysis (Exhibit 23), it must – consistent with its ethical duty – respond to the 30 pages of fact, law, and legal argument the analysis particularizes and disclose the facts bearing upon the appearance and actuality that it is not a fair and impartial tribunal....”

Plaintiffs' accompanying memorandum of law [R-751-758], focused, exclusively, on governing standards for judicial disqualification and disclosure, similarly stated:

“Should the Court not disqualify itself based on this motion, it must justify its September 22, 2011 decision by confronting and addressing, with specificity, the facts and law which the motion presents. Only by so doing can it demonstrate that there are no grounds on which its impartiality might “reasonably be questioned”. In such circumstances, it must disclose facts bearing upon its impartiality.” [R-757-758]

L. Satterlee's January 11, 2012 Opposition to Plaintiffs' December 21, 2011 Motion [R-765-809]

Satterlee opposed plaintiffs' motion by a 23-page memorandum of law [R-780-809], bearing the names of Satterlee attorneys Mark Fowler and Michael Gibson, and identifying attorney Sullivan as “of counsel”. The memorandum was signed by attorney Gibson, who also signed an affidavit which did not swear to the truth of his memorandum and whose sole purpose was to annex decisions cited in the memorandum that were either unreported or not reported in the West National Reporter System [R-765-779].

Satterlee's opposing memorandum purported that plaintiffs' motion was “baseless” and “not supported by a shred of actual evidence” [R-786] – which it did by concealing, distorting, and misrepresenting the content of the motion to obscure that it did not deny or dispute the accuracy of plaintiffs' analysis of Justice Cohalan's short-form order or even the synopsis of the

analysis presented by their affidavit. Nor did it deny or dispute any of the law or argument presented by plaintiffs' memorandum of law.

M. Plaintiffs' February 10, 2012 Reply in Further Support of their December 21, 2011 Motion [R-810-834]

On February 10, 2012, plaintiffs replied by a 24-page affidavit of plaintiff Elena Sassower [R-810-834]. It opened by stating:

"2. Once again, Satterlee continues its *modus operandi* of litigation fraud, apparently confident that the Court, once again, will allow it 'to get away with anything' and will, as it did by its September 22, 2011 short-form order ([R-3-8])^{fn}, cover up Satterlee's flagrant violation of mandatory rules of professional conduct, beginning with truth, by granting Satterlee relief to which it has not the slightest factual and legal entitlement.^{fn} That is the only conclusion that can be drawn from Satterlee's 23-page opposing memorandum of law, falsifying the content of plaintiffs' December 21, 2011 motion...

9. ...Based on the showing herein...plaintiffs are entitled – and hereby request – imposition of maximum costs and \$10,000 sanctions against Satterlee – for their latest violation of 22 NYCRR §130-1.1 by their January 11, 2012 opposition to plaintiff's motion." [R-810-811, R-819].

The affidavit then particularized the deceit pervading Satterlee's opposition, including its concealment that the first branch of plaintiffs' motion requested disclosure by Justice Cohalan, in the event he denied disqualification – relief that was, therefore, unopposed.

N. Justice Cohalan's April 23, 2012 Short-Form Order [R-11]

By a four-sentence short-form order dated April 23, 2012 [R-11], Justice Cohalan concealed all the facts, law, and legal argument presented by plaintiffs' December 21, 2011 motion, including its 30-page analysis of his September 22, 2011 short-form order, whose accuracy he did not deny or dispute. The April 23, 2010 short-form order also concealed most of the relief the motion sought, *to wit*:

- (1) to disqualify Justice Cohalan for interest;
- (2) disclosure of facts bearing upon his fairness and impartiality;
- (3) vacatur of his September 22, 2011 short-form order pursuant to CPLR §5015(a)(3) for "fraud, misrepresentation, or other misconduct of an adverse party";
- (4) vacatur of his September 22, 2011 short-form order pursuant to CPLR §5015(a)(4) for "lack of jurisdiction" by reason of his disqualification for interest; and
- (5) leave to amend the verified complaint pursuant to CPLR §3025(b) to make even more explicit the institutional reckless disregard for truth cause of action.

Nor was any of this denied by a generic denial of the motion. Rather, the April 23, 2012 short-form order denied only such relief as it identified – and none with any factual findings or reasoning, namely:

- (1) disqualification "for bias", denied as "without legal merit", after being described as based on the September 22, 2011 decision having "granted the defendants' motion to dismiss";

ARGUMENT

POINT I

The Record of Plaintiffs' December 21, 2011 Motion Entitled Them to its Requested Relief, as a Matter of Law, Beginning with Justice Cohalan's Disqualification for Actual Bias and Interest & Vacatur of his September 22, 2011 Short-Form Order by Reason Thereof

The record of plaintiffs' December 21, 2011 motion establishes their entitlement to its requested relief, *as a matter of law*. That is why the four-sentence April 23, 2012 short-form order makes no findings as to the state of the record, identifies none of the facts, law, or legal argument the motion presented, and denies, without any reasoning, only such relief as it selectively identifies.

Plaintiffs rest on that record – summarized by the above statement of the case (pp. 55-63, *supra*) – and, specifically:

- (1) plaintiff Elena Sassower's moving affidavit [R-589-750], particularizing the demonstrated actual bias and interest of Justice Cohalan, including by its annexed 30-page analysis of his September 22, 2011 short-form order [R-639-668], and particularizing the disclosure mandated in the event he did not disqualify himself [R-592-595];
- (2) plaintiffs' memorandum of law [R-751-758], focused, exclusively, on judicial disqualification/disclosure and the principles governing it; and
- (3) plaintiff Elena Sassower's reply affidavit [R-810-834], demonstrating Satterlee's opposition to be not just frivolous, but fraudulent, entitling plaintiffs to additional maximum

costs and \$10,000 sanctions against Satterlee pursuant to 22 NYCRR §130-1.1.

As Justice Cohalan's April 23, 2012 short-form order provides no reasoning for such conclusory and reason-less dispositions as it made, this Court has the obligation, consistent with its appellate/supervisory function, to reinforce that such is not appropriate decision-making and, indeed, that it carries a presumption of illegitimacy, upon appellate review.³

As to the motion's threshold first branch – for Justice Cohalan's disqualification for demonstrated actual bias and interest and, if denied, for disclosure – plaintiffs' memorandum of law articulated the standard that must govern, without contest from either Satterlee or Justice Cohalan:

“Adjudication of a motion for a court's disqualification must be guided by the same legal and evidentiary standards as govern adjudication of other motions. Where, as here, the motion details specific, supporting facts, the court, as any adversary, must respond to those facts, as likewise the law presented relative thereto. To fail to do so would subvert the very purpose of resolving the ‘reasonable questions’ warranting disqualification.

Such is consistent with the ‘recusal reform’ advocacy of the American Bar Association and such organizations as the Brennan Center for Justice, in collaboration with the national coalition Justice at Stake Campaign. Among their positions,

³ See “Procedure as a Source of Judicial Legitimacy” (at p. 552) in *“Keeping Up Appearances: A Process Oriented Approach to Judicial Recusal”*, 53 University of Kansas Law Review, 531 (2005) by Amanda Frost, which plaintiffs cited to Justice Cohalan [R-498] with the five sources of legitimacy she identifies: “Litigants Initiate and Frame Disputes”; “Adversarial Presentation of Disputes”; “Reasoned Decisionmaking”; “Reference to Governing Body of Law”; “Impartial Decisionmaker”.

‘Enhanced Disclosure’ and ‘Transparent and Reasoned Decision-Making’, as to which they have explained:

‘It is critically important – for litigants, for the courts, and for the public at large – that disqualification decisions offer transparent and reasoned decision-making. ...a failure to explain recusal decisions ‘allows judges to avoid conscious grappling with the charges made against them’ and ‘offends not only a basic tenet of legal process, but also a basic tenet of liberal democracy – that officials must give public reasons for their actions in order for those actions to be legitimate.’^[fn] Such a failure often makes it far more difficult for those reviewing a specific disqualification decision to understand the underlying rationale or facts, and denies other judges, justices, and courts both precedent for use in other cases and the chance to build on this precedent in developing a more refined body of disqualification jurisprudence.’, ‘*Invigorating Judicial Disqualification: Ten Potential Reforms*’, *Judicature*, Vol. 92, #1 (July-August 2008) – excerpted from its April 2008 report ‘*Fair Courts: Setting Recusal Standards*’.

The imperative of giving reasons is set forth in *Nadle v. L.O. Realty Corp*, 286 AD2d 130, 735 NYS2d 1 (App. Div. 1st Dept. 2001) – approvingly cited by the Appellate Division, Second Department in *Hartford Fire Insurance Co. v. Cheever Development Corp*, 289 A.D.2d 292; 734 N.Y.S.2d 598 (2001):

“...we now take this opportunity to explain the basis for our insistence on the inclusion of the reasoning underlying a ruling. First of all, as the Third Department has had occasion to note:

Written memoranda assure the parties that the case was fully considered and resolved logically in accordance with the facts and law. Indeed, written memoranda may

serve to convince a party that an appeal is unlikely to succeed or to assist this court when considering procedural and substantive issues when appealed. (*Dwore[t]sky v. Dwore[t]sky*, 152 A.D. 2d 895, 896.)

In addition to the potential benefits to the litigants, the inclusion of the court's reasoning is necessary from a societal standpoint in order to assure the public that judicial decision making is reasoned rather than arbitrary.'' (*Nadle v. L.O. Realty*, underlining added).'' [R-755-757, underlining in plaintiffs' memorandum]

If this Court disagrees with such adjudicative principles for judicial disqualification motions, it must articulate the principles it deems appropriate⁴ – plainly not observed by Justice Cohalan.

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.

Similarly, Justice Cohalan's concealment of the disclosure sought by the motion leaves this Court with no choice but to disqualify him, *as a*

⁴ See, "Recusal and Recompense: Amending New York Recusal Law in Light of the Judicial Pay Raise Controversy", 57 Buffalo Law Review 1597 (Dec. 2009), by Jeffrey Fiut, concluding "New York recusal law is broken."

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.

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 evidentially 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 motion furnishes the controlling legal authority [R-753-754].

POINT II

The Record of Plaintiffs' November 29, 2010 Cross-Motion Entitled Them to its Requested Relief, as a Matter of Law, including Summary Judgment

The record of plaintiffs' November 29, 2010 cross-motion also establishes their entitlement to its requested relief, *as a matter of law*. That is also why the September 22, 2011 short-form order [R-3-8] identifies none of the facts, law, or legal argument the cross-motion presented – including the allegations of plaintiffs' complaint stating their causes of action and the video and documentary evidence establishing them – and why it materially misrepresents and conceals the cross-motion's requested relief in denying it without reasons or by reasons that are false.

Plaintiffs rest on the record of their cross-motion, summarized by the above statement of the case (pp. 31-54, *supra*), and, specifically:

(1) their memorandum of law in support of their cross-motion [R-451-514] and plaintiff Elena Sassower's moving affidavit [R-244-450], particularizing the fraud and deceit of Satterlee's dismissal motion in concealing, falsifying, and distorting the allegations of their complaint and applicable law – and setting forth the facts, law, video and documentary evidence establishing their entitlement to the relief sought by their cross-motion;

(2) their reply memorandum of law [R-542-585], highlighting that their cross-motion was unopposed by Satterlee, *as a matter of law* – with the fourth and seventh branches unopposed, in fact – and particularizing Satterlee's continued litigation fraud, entitling them to additional

maximum costs and \$10,000 sanctions against Satterlee pursuant to 22 NYCRR §130-1.1;

(3) the transcript of the June 1, 2011 oral argument before Justice Cohalan [R-609-638], during which plaintiffs directly presented him with facts and law dispositive of their entitlement to relief – all omitted by his September 22, 2011 short-form order.

As the first four branches of plaintiffs' cross-motion address Satterlee's fraud and deceit [R-241-42] – covered up and rewarded by Justice Cohalan's September 22, 2011 short-form order – this Court will be required to articulate the showing that must be made – and was here made— for a judge's discharge of his mandatory "Disciplinary Responsibilities" under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct and for relief pursuant to 22 NYCRR §130-1.1 *et seq.*, New York's Rules of Professional Conduct for Attorneys, and Judiciary Law §487(1). This includes confronting the threshold issue of Satterlee's disqualification for conflict of interest as a defendant DOE, sought by the fourth branch of plaintiffs' cross-motion – entitlement to which was undenied and undisputed by Satterlee.

Once this Court confronts the first four branches of plaintiffs' cross-motion by findings of fact and conclusions of law as to Satterlee's conduct – such as were not made by Justice Cohalan – it will have before it a record establishing plaintiffs' entitlement, *as a matter of law*, to reinstatement of

their complaint⁵ and all the relief sought by their cross-motion's seventh branch: summary judgment on their causes of action for libel, libel *per se*, journalistic fraud, and institutional reckless disregard for truth – and removal of the “**ACCURACY**” policy from defendant Journal News' masthead as a false and misleading advertising claim in violation of public policy, including General Business Law, Article 22-A (§§349 and 350, *et seq.*).

To assist the Court in its findings and fact and conclusions of law with respect to the ground-breaking journalistic fraud and institutional reckless disregard for truth causes of action, the pertinent record references establishing plaintiffs' entitlement to recognition of those causes of action, *as a matter of law*, are:

Plaintiffs' November 29, 2010 opposition/cross-motion memorandum of law at R-494-501, responding to Satterlee's single paragraph in its October 22, 2010 memorandum of law for dismissal of the journalistic fraud cause of action [at R-239] and, at R-511-514, laying out the basis for summary judgment to plaintiffs on both the journalistic fraud and institutional reckless disregard for truth causes of action;

⁵ Beyond the insufficiency and fraudulence of Satterlee's motion to dismiss the complaint, as particularized by plaintiffs' cross-motion, the motion had to be denied, *as a matter of law*, for a further reason. It is well-established that where a motion to dismiss for failure to state a cause of action is directed to the whole complaint, as was Satterlee's, it must be denied in its entirety if any one cause is legally sufficient, *Advance Music Corp. v. American Tobacco Company*, 296 NY 79 (1946); *Birnbaum v. Citibank*, 97 AD2d 392 (2nd Dept. 1983); *Canavan v. Chase Manhattan Bank*, 234 AD2d 494 (2nd Dept. 1996); *Ross Network, Inc. v. RSM McGladrey, Inc., et al.*, 11 Misc.3d 1089A (2006). This may explain why Satterlee's dismissal motion obliterated the existence of the institutional reckless disregard for truth cause of action, to which, by reason of defendant Journal News' understaffed or scuttled position of **READERS' REPRESENTATIVE**, it plainly had no defense.

CONCLUSION

Based on the record herein, this Court's constitutionally-mandated appellate and supervisory duty is to not only reverse, but to vacate, the appealed-from April 23, 2012 and September 22, 2011 short-form orders and to grant plaintiffs all the relief to which their December 21, 2011 motion and November 29, 2010 cross-motion entitled them, *as a matter of law* – including the summary judgment sought by the seventh branch of their cross-motion.


ELENA RUTH SASSOWER

Dated: August 20, 2012
White Plains, New York

CERTIFICATE OF COMPLIANCE

Pursuant to §670.10.3(f), this is to certify that plaintiffs-appellants' brief for appeals #2012-00126 and #2012-05360 was prepared on a computer. The typeface is New Times Roman. The font is 14. The line-spacing is double. The word count is 16,763, excluding the signature line and the nine words beneath it consisting of my name and date, etc. Also excluded is the "Questions Presented", which is an additional 739 words. The combined total is 17,502 words.


ELENA RUTH SASSOWER