

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DORIS L. SASSOWER,

Plaintiff,

-against-

94 Civ. 4514 (JES)

Plaintiff's
Affidavit in Further
Support of Temporary
Injunction and for
Sanctions Pursuant
to FRCP 56

HON. GUY MANGANO, PRESIDING JUSTICE
OF THE APPELLATE DIVISION, SECOND DEPARTMENT
OF THE SUPREME COURT OF THE STATE OF
NEW YORK, and the ASSOCIATE JUSTICES THEREOF,
GARY CASELLA and EDWARD SUMBER, Chief Counsel
and Chairman, respectively, of the GRIEVANCE
COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,
GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL
DISTRICT, Does 1-20, being present members
thereof, MAX GALFUNT, being a Special Referee,
and G. OLIVER KOPPELL, Attorney General of the
State of New York, all in their official and
personal capacities,

Defendants.

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the above-named Plaintiff, fully familiar with
the facts, papers, and proceedings hereinafter referred to.

2. This Affidavit is submitted in further support of
my as yet unsigned Order to Show Cause for Preliminary
Injunction with TRO based on their bad-faith and frivolous
opposition to my application for summary judgment--and for
sanctions against Defendants pursuant to FRCP Rule 56(g).

PROCEDURAL HISTORY

3. The procedural history of this case prior to
September 28, 1995 is detailed at pp. 3-9 of my Order to Show

for a Preliminary Injunction and TRO, filed with the Court on September 26, 1995. As set forth therein, Defendants' dismissal motion had to be denied since, as documentarily established by my June 23, 1995 opposing papers, it and Defendants' Answer were in bad-faith and frivolous. Moreover, I was entitled me to summary judgment against Defendants--relief I had requested in my June 23, 1995 opposing papers--as to which Defendants, then in default, had not opposed.

4. On September 28, 1995, I appeared in Court to argue in support of the TRO relief. As reflected by the transcript, the Court appeared to be totally unfamiliar with the motion papers and with the posture of this case. It did not sign my Order to Show Cause, did not require opposing papers, and, initially, denied it outright. Thereafter, upon my request, it agreed to reserve decision until October 27, 1995--the date set for argument on Defendants' dismissal motion and my application for summary judgment. It also relieved Defendants of their default in responding to my application for summary judgment, extending their time to October 6, 1995.

5. By reason of the Court's conduct on that date, exemplifying its previously evidenced hostility toward me and bias in favor of Defendants, I have presented an Order to Show Cause for this Court's recusal, pursuant to 28 U.S.C. §144 and §455. A copy of the transcript of the September 28, 1995 proceedings is annexed as Exhibit "A" thereto.

**MY ENTITLEMENT TO SANCTIONS AGAINST DEFENDANTS,
INCLUDING CONTEMPT**

6. Defendants' have now, belatedly, submitted a patently insufficient and frivolous opposition to my summary judgment motion, consisting of a Statement in Opposition to my Rule 3(g) Statement, an Affidavit of Defendant Casella, and a Memorandum of Law.

7. The requirements for opposing summary judgment are enunciated in Rule 56 itself:

"(e) **Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge...When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." (emphasis added)

8. Defendants do not deny that my application for summary judgment was "made and supported as provided in this rule". Supporting my application for conversion of their motion for judgment on the pleadings was my Rule 3(g) Statement, as to which I contended there was no genuine issue of fact, a Memorandum of Law, and my Affidavit, sworn to on June 23, 1995. Said Affidavit, in addition to explicitly repeating, realleging, and reiterating the allegations of my Verified Complaint, annexed, inter alia, a Critique identifying the documentary proof in substantiation thereof, showing that Defendants' Answer was utterly fraudulent and in bad-faith. As to such documentary

proof, I contended--both in my Affidavit and Rule 3(g) Statement--that it was in Defendants' possession, custody, and control.

9. Consequently, to withstand my application for summary judgment, Defendants could not merely deny the allegations of my 3(g) Statement, but, pursuant to Rule 56(e) were required to substantiate their denials and to show "no genuine issue for trial".

10. Yet, Defendant Casella's eight-paragraph affidavit wholly fails to make any affirmative statement in substantiation of Defendants' 3(g) denials and wholly fails to present any "genuine issue for trial", which, moreover, it does not even identify.

11. That Defendant Casella's irrelevant and non-probative, affidavit is known to be such by Defendants is reflected by its first paragraph wherein Defendant Casella disingenuously limits his testimonial abilities to being "fully familiar with the facts set forth below". In fact, Defendant Casella has direct, first-hand knowledge of the vast majority of the allegations of my Verified Complaint. This was recognized by Assistant Attorney General Weinstein in his December 30, 1995 letter to the Court (Exhibit "A") wherein he stated:

"A great many of the 251 pleaded allegations spanning 71 pages of the complaint pertain to defendant Casella, Chief Counsel of the Grievance Committee for the Ninth Judicial District. Because Mr. Casella has been on vacation for the past two weeks and will not return until January 3, 1995, we are unable to draft an answer to the complaint within the time directed by the Court"

12. Indeed, all the allegations relating to the unlawful and constitutionally violative manner in which my suspension was procured and has been perpetuated--which are specifically forth at ¶4 of my Rule 3(g) Statement--involve him.

13. Yet, Defendant Casella--whose fraudulent Answer has been documentarily exposed by my summary judgment/sanctions application--totally avoids making any affirmative statement as to the allegations of my Verified Complaint or the paragraphs of my Rule 3(g) Statement. As such, his Affidavit--like Defendants' so-called "Memorandum of Law--is interposed simply to create the illusion of legitimate opposition to my summary judgment motion--when, in fact, Defendants know there is none.

14. Rule 56 expressly provides for a circumstance, such as at bar:

"(g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt."

15. I am entitled to such relief against Defendants under Rule 56(g) and request same.

16. As to Defendants' misnomered 2-1/2 page "Memorandum of Law in Reply to Plaintiff's Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for

Sanctions", it presents neither law nor argument in opposition to the granting of summary judgment in my favor. Indeed, the only thing it argues--without any evidentiary or legal showing of entitlement--is that my sanction request should be denied.

17. Such argument as set forth in Assistant Attorney General Weinstein's so-called "Memorandum" is itself sanctionable. Not only does it fail to address the multitude of misrepresentations I documented in my June 23, 1995 submissions in support of sanctions, it pretends that Assistant Attorney General Weinstein's statement in Defendants' dismissal motion that my suspension arose "during an underlying disciplinary proceeding" was:

"a reasonable inference from statements contained in the complaint and supported by court documents of which this Court may take judicial notice."

18. Yet, no such "reasonable inference" was possible from the specific allegations of my Complaint--which expressly alleged the contrary (§§67, 68, 69, 79(a)-(e), 83, 87, 88, 99, 108, 109). This was painstakingly pointed out in my May 25, 1995 letter to the Attorney General's office--which called upon it to withdraw its dismissal motion--crafted as it was on such pivotal misstatement, among others.

19. Defendants' failure to respond to such letter--and its documentary attachments--is dispositive of the bad-faith and fraudulence of their dismissal motion and Answer.

20. Such letter was annexed at Exhibit "1" to my June 23, 1995 Affidavit, supporting my richly-deserved application summary judgment and sanctions against Defendants.


DORIS L. SASSOWER

Sworn to before me this
27th day of October 1995

Notary Public