

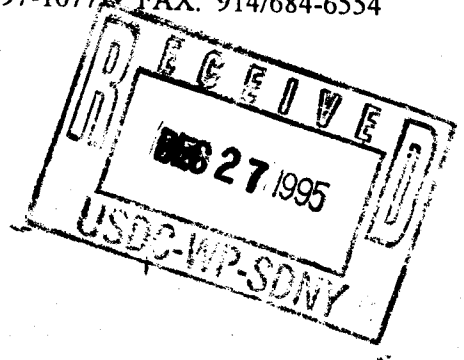
DORIS L. SASSOWER

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By Courier

December 27, 1995

Judge John E. Sprizzo
United States District Court
United States Courthouse
40 Centre Street
New York, New York 10007



Re: Sassower v. Mangano, et al.
94 Civ. 4514 (JES)

Dear Judge Sprizzo:

This letter responds to your Order dated November 9, 1995, not received by me until December 11, 1995. For the convenience of the Court, a copy of the Order is annexed hereto, as is the envelope in which the Order was sent, bearing postmark of December 7, 1995.

With all due respect, I must, at the outset, call Your Honor's attention to the fact that the aforesaid Order is erroneous in three respects. Taken sequentially as such errors appear, they are as follows:

- (1) Contrary to Your Honor's recitation, there was no oral argument on October 13, 1995. The only argument before your Honor in October occurred on October 27, 1995. The court appearance prior thereto was on September 28, 1995 and related to my Order to Show Cause for a preliminary injunction and TRO;
- (2) Contrary to Your Honor's recitation, defendants did not file a motion for summary judgment. They made a motion for judgment on the pleadings, purportedly pursuant to FRCP 12(c);
- (3) Contrary to Your Honor's recitation, I did not file a cross-motion for summary judgment. Rather, I requested the Court, pursuant to FRCP 12(c), to convert defendants' aforesaid motion for judgment on the pleadings to one for summary judgment in my favor. Coupled with that was my request for sanctions, to which the Court makes no reference whatever in its recitation of "having considered all matters raised".

EX "C" 790

The latter two errors, which are particularly material, are surprising since the Court has been repeatedly corrected as to the nature of the motions before it¹. I regret to say that it does not inspire confidence that with those motions sub judice before the Court, Your Honor continues to repeat the same material errors, with consequent potential prejudice to my rights.

I would appreciate clarification as to the purpose of the Order's direction that "plaintiff pro se shall submit to the Court all documents filed in state court proceedings..." and the legal authority for same--since the November 9, 1995 Order cites none.

I respectfully submit that such documents as the Order directs to be produced by me are not required for adjudication of any issue before the Court, since the issues are strictly matters of law, not fact.

The standard for adjudicating defendants' Rule 12(c) dismissal motion for judgment on the pleadings is the sufficiency of the pleadings. As pointed out at Point I of my June 23, 1995 Memorandum of Law, defendants' post-Answer dismissal motion is procedurally improper--defendants having moved on "the complaint", rather than the "pleadings". Moreover, to the extent that defendants' dismissal motion raises extraneous issues which cannot be adjudicated based on the submitted motion papers, such motion must be denied as a matter of law. It is the movant who has the burden of supporting his motion with such substantiating documents as may be appropriate, and defendants have failed to meet that burden.

As to my request for conversion of defendants' Rule 12(c) dismissal motion for judgment on the pleadings into one for summary judgment in my favor, my October 27, 1995 Affidavit in Further Support of Temporary Injunction and for Sanctions Pursuant to FRCP 56 pointed out my entitlement, as a matter of law, to summary judgment under FRCP 56(e) and to sanctions under FRCP 56(g)--defendants having failed to raise or identify any "genuine issue for trial". (See, inter alia, ¶¶9, 10 of my Affidavit).

On the issue of my entitlement to sanctions, my June 23, 1995 Affidavit in opposition to defendants' Rule 12(c) dismissal motion and in support of conversion to summary judgment in my favor annexed (as Exhibit "1-D") and incorporated by reference (at ¶17) a 28-page critique which meticulously documented that

¹ See, inter alia, my 9/18/95 ltr to the Court; 9/28/95 Transcript, pp. 14-5; pp. 26-7; pp. 31-3.

more than 150 responses given by defendants in their Answer to my Complaint were knowingly false and in bad-faith. Such critique was, additionally, incorporated at ¶1 of my Rule 3(g) Statement.

Defendants, however, submitted no evidentiary or testimonial opposition to my right to sanctions--any more than they did in opposition to my entitlement for summary judgment. Thus, in violation of FRCP 56(e), defendants wholly failed to substantiate their boiler-plate denial of ¶1 of my 3(g) Statement in their Opposition Statement². This is more specifically pointed out in my October 27, 1995 Affidavit in Further Support of Temporary Injunction and for Sanctions Pursuant to FRCP 56 (See, inter alia, ¶¶10, 13, 16-20).

Consequently, as a matter of law, I am entitled to sanctions against defendants and their counsel for their fraudulent and frivolous Answer--in addition to sanctions for their dishonest dismissal motion, demonstrated over and again in my June 23, 1995 Memorandum of Law.

I wish to make it perfectly clear that I am not averse to providing a copy of the state court disciplinary file that the Court has directed me to produce. As reflected by Exhibits "1-B", "1-C", and "1-D", annexed to my June 23, 1995 Affidavit in opposition to dismissal and in support of conversion, the disciplinary files prove incontrovertibly defendants' ongoing deliberate and retaliatory deprivation of my federally and state-guaranteed rights. However, with all due respect, I believe I have a right to know what legal purpose is intended to be served by the Court's direction and the legal authority for same.

Finally, inasmuch as the Court's Order includes in its recitation the fact that I filed a motion for TRO and Preliminary Injunction, I would have expected the Court to have directed defendants to respond thereto. This is particularly so considering my prima facie showing of entitlement on that motion, including cited dispositive decisional law of New York's Court of Appeals in Matter of Nuey and Matter of Russakoff and the Appellate Division, Second Department's own rules--annexed thereto as Exhibits "G-1", "G-2", and "G-3". This is over and beyond my entitlement to adjudications in my favor on the other motions before the Court, as hereinabove set forth.

² Defendants' Memorandum of Law--which cites no law--does not even refer to the 28-page critique.

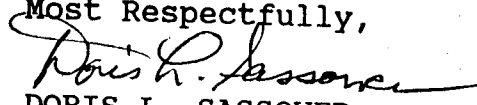
Judge Sprizzo

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Consequently, I would appreciate the Court's clarification on that subject as well.

Most Respectfully,



DORIS L. SASSOWER

DLS/er
Enclosure

cc: New York State Attorney General

rec'd 12/11/95

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SASSOWER,

Plaintiff(s),

- against -

94 Civ. 4514 (JES)

MANGANO, ET AL.,

ORDER

Defendant(s).

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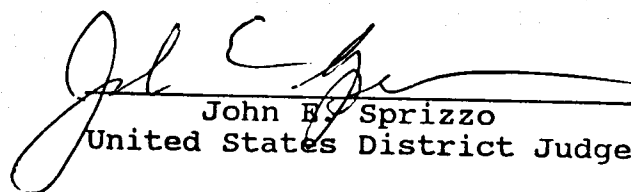
Counsel for defendants and plaintiff pro se in the above-captioned action having appeared before this Court at Oral Argument on October 13, 1995, and defendants having filed a motion for summary judgment, and plaintiff pro se having filed a motion for a TRO and preliminary injunction and a cross-motion for summary judgment, and the Court having considered all matters raised, it is

ORDERED that plaintiff pro se shall submit to the Court copies of all documents filed in state court proceedings relating to complaints filed against plaintiff pro se, the suspension of plaintiff pro se's license to practice law and the constitutionality of the proceedings therein, on or before January 2, 1995, and it is further

ORDERED that neither party shall file supplemental affidavits or memoranda of law without leave of Court.

Dated: New York, New York

November 9, 1995


John B. Sprizzo
United States District Judge

rec'd 12/11/75

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94-4514

UNITED STATES DISTRICT COURT
CHAMBERS OF
JOHN E. SPRIZZO
UNITED STATES COURTHOUSE
NEW YORK, NY 10007

Doris L. Sassower
283 Soundview Avenue
White Plains, N.Y. 10606

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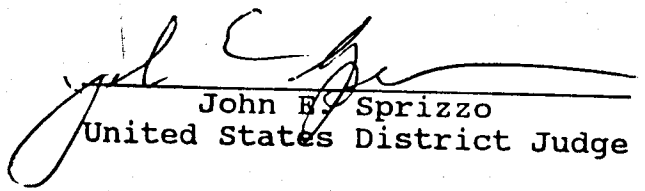
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94 Civ. 4514 (JES)

ORDER

-----X

laintiff pro se in the above-
ore this Court at Oral Argument
ts having filed a motion for
se having filed a motion for a
a cross-motion for summary
ered all matters raised, it is
all submit to the Court copies
urt proceedings relating to
pro se, the suspension of
practice law and the
herein, on or before January
file supplemental affidavits
ourt.


John E. Sprizzo
United States District Judge