

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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DORIS SASSOWER, : Index No. 29094/92  
 :  
 : Plaintiff, :  
 :  
 : - against - :  
 :  
 : GANNETT COMPANY, INC., GANNETT :  
 : SATELLITE INFORMATION NETWORK, :  
 : INC., NANCY Q. KEEFE, DEBBIE PINES, :  
 : ELAINE A. ELLIS, CAROLE TANZER :  
 : MILLER, CAMERON McWHIRTER, TOM :  
 : ANDERSON, MICHAEL MEEK, LAURIE :  
 : NIKOLSKI, MILTON HOFFMAN, "DOES" :  
 : 1-15, being Gannett editors, :  
 : EVELYN BRESLAW and ABBIE RETRILLO, :  
 :  
 : Defendants. :  
-----X

**MEMORANDUM OF LAW IN SUPPORT  
OF DEFENDANTS' MOTION AND IN  
OPPOSITION TO SASSOWER'S CROSS-MOTION**

**Preliminary Statement**

Defendants Gannett Company, Inc., Gannett Satellite Information Network, Inc., Nancy Q. Keefe, Debbie Pines, Elaine A. Ellis, Carole Tanzer Miller, Cameron McWhirter, Tom Anderson, Michael Meek, Laurie Nikolski, Milton Hoffman, and "Does" 1-15, being Gannett editors (the "Gannett defendants"), submit this memorandum of law in support of their motion, pursuant to CPLR §3012, dismissing this action on the ground that plaintiff has failed to serve a complaint in accordance with the provisions of CPLR §3012(b), and in opposition to the cross-motion of plaintiff Dorothy L. Sassower ("Sassower") for a 90-day extension of time to serve her complaint.

This memorandum will demonstrate the following:

1. This action should be dismissed, pursuant to CPLR §3012, because Sassower failed to serve a complaint within twenty days after the service of a Demand for Complaint and still failed to serve a complaint after an additional extension of time was granted.

2. Sassower should not be permitted to serve an untimely complaint, pursuant to CPLR §3012(d), because she has completely failed to demonstrate either a reasonable excuse for the delay or that the action has legal merit.

#### Statement of Facts

The relevant facts are set forth in the affidavits of Robert M. Callagy, Esq., sworn to June 15, 1993 ("Callagy Aff.") and July 8, 1993 ("Second Callagy Aff.") and the affidavit of Doris L. Sassower, Esq., sworn to July 6, 1993 ("Sassower Aff."), and the exhibits annexed thereto, and will be referred to throughout this memorandum.

#### Argument

##### POINT I

#### **THE COMPLAINT SHOULD BE DISMISSED PURSUANT TO CPLR §3012(b)**

CPLR §3012(b) provides that if the complaint "is not served with the summons, the defendant may serve a written demand for the complaint" within the time provided in Rule 320(a) for an appearance. It further provides that service of the complaint "shall be made within twenty days after service of the demand"

and that the court "upon motion may dismiss the action if service of the complaint is not made as provided in this subdivision."

It is undisputed that a summons in this action was served, without complaint, on or about February 22, 1993 (Callagy Aff., ¶3 and Exh. A) and that the Gannett defendants served a Demand for Complaint on Sassower, within the required time, on March 9, 1993 (Callagy Aff., ¶4 and Exh. B). It is also undisputed that Sassower failed to serve the complaint twenty days after service of the demand and that, after receiving an extension of time until April 20, 1993, she again failed to serve the complaint. (Callagy Aff., ¶¶5-6 and Exh. C.) No further extensions of time were granted. (Callagy Aff., ¶6.)

Thus, pursuant to CPLR §3012(b), and upon these undisputed facts, this action should be dismissed.

#### POINT II

#### **SASSOWER HAS FAILED TO DEMONSTRATE THAT SHE IS ENTITLED TO EXTENSIONS OF TIME TO SERVE AN UNTIMELY COMPLAINT**

It is well-settled that a plaintiff who seeks to serve a complaint after failing to comply with CPLR §3012(b) must demonstrate both (a) a reasonable excuse for the delay and (b) the legal merit of the claim. Barasch v. Micucci, 49 N.Y.2d 594, 427 N.Y.S.2d 732 (1980); Puccini v. Owens-Illinois Glass Co., 146 A.D.2d 758, 537 N.Y.S.2d 242 (2d Dep't 1989); Preferred Mutual Insurance Co. v. Walter J. Socha Builders, Inc., 128 A.D.2d 923, 512 N.Y.S.2d 574 (3rd Dep't 1987).

Here, Sassower has completely failed to demonstrate either that there was a reasonable excuse for the delay or that her claim has any legal merit. To the contrary, all the evidence before the court demonstrates that Sassower has no reasonable excuse and that her claim is entirely baseless and frivolous.

**A. Sassower's Failure to Demonstrate Legal Merit**

In order to avoid dismissal for failure to serve a timely complaint, the plaintiff must demonstrate to the court that the claim against the defendant has legal merit. "This requirement may be satisfied by the filing of one or more 'affidavits of merit' containing evidentiary facts and attested to by individuals with personal knowledge of those facts."

Barasch v. Micucci, supra, 49 N.Y.2d at 599.

Sassower has completely failed to make the required showing. With regard to the legal merit of the action, she states only that "I have a good and meritorious cause of action, as shown by the Rider attached to the Summons served upon the Defendants, annexed as Exhibit 'A' to Mr. Callagy's Affidavit." (Sassower Aff., ¶2.) However, this "Rider," entitled "Attachment to Summons with Notice" (the "Attachment"), consists entirely of unsworn allegations and does not fulfill the requirements for a demonstration of legal merit. Moreover, even if the allegations contained in the Attachment were presented in a form meeting the requirements of CPLR §3012(b) and the case-law, and even if such allegations are assumed to be true, the defamation claim

described by Sassower is clearly barred by the applicable statute of limitations.

Pursuant to Section 215(3) of the CPLR, actions for libel or slander must be commenced within one year. Thus, if an action is commenced more than one year after publication of the allegedly defamatory statements, the action is time-barred. Sassower alleges that the Gannett defendants published "false and defamatory" statements about her on or about October 24, 1991, November 18, 1991, February 12, 1992, and February 14, 1992. It is undisputed that the Summons was served on the Gannett defendants on February 22, 1993.

Plainly, then, Sassower failed to commence a timely action for libel with respect to any of the allegedly defamatory publications. She has demonstrated no reason why the applicable statute of limitations should not bar this action in its entirety. She has made no showing whatsoever of the legal merits of this action -- an action which is clearly frivolous and devoid of merit.

**B. Sassower's Failure to Demonstrate a Reasonable Excuse**

Sassower has completely failed to offer a reasonable excuse or adequate justification for her delay in serving the complaint. Her proffered excuse -- that she has been unable to retain competent counsel -- is patently incredible. (Sassower Aff., ¶12.)

The allegedly defamatory statements were published over a year-and-a-half ago. Sassower prepared the Summons, dated

October 26, 1992, almost nine months ago. The Summons was served almost five months ago, and the Demand for Complaint was served exactly four months ago. There is simply no valid reason why Sassower should not have been able to retain counsel in time to serve a timely complaint. Her explanation for having failed to retain counsel -- the supposed reluctance of competent counsel to represent libel plaintiffs -- is absurd on its face. (Sassower Aff., ¶¶12-14.) The records of this and other courts provide ample evidence that competent counsel is available to libel plaintiffs of all kinds.

Sassower cites no case in which a New York court has found that a plaintiff's supposed inability to engage competent counsel, over a period of many months, constitutes excusable delay for purposes of CPLR §3012. Sassower's delay is, to the contrary, inexcusable, and her outrageous request for "an ample enlargement of time" in order to continue her "search for counsel" (Sassower Aff., ¶15) is typical of her demonstrated disdain for the rules of this Court and, in particular, for the provisions and intent of CPLR 3012.

Conclusion

For the foregoing reasons, it is respectfully submitted that the Gannett defendants' motion to dismiss this action should be granted and that Sassower's cross-motion should be denied.

Dated: New York, New York  
July 8, 1993

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