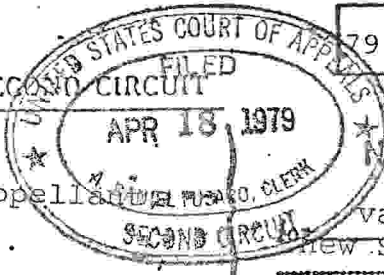


Second Circuit Rule 27(a) governing use of this form is reprinted on reverse. It's requirement that lower court opinion or agency decision be attached.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT



79 7205

Docket Number

NOTICE OF MOTION

state type of motion

vacate dismissal and issue new scheduling Order.

GEORGE SASSOWER,

Plaintiff-Appellant

-against-

APPELLATE DIVISION etc.

MOTION BY: (Name and tel. no. of attorney in charge)

OPPOSING COUNSEL: (Name and tel. no. of attorney in charge)

GEORGE SASSOWER, Esq.

KATHLEEN GILL MILLER, Esq.

914-636-4050

488-5166

Has opposing counsel consented? Yes No

EMERGENCY MOTIONS, MOTIONS FOR STAYS

Has service been effected? Yes No

& INJUNCTIONS PENDING APPEAL

Is oral argument desired? Yes No

Has request for relief been made below?

(Substantive motions only)

(See F.R.A.P. Rule 8.)

Yes No

Requested return date: April 25, 1979.

Would expedited appeal eliminate need for this motion?

Yes No

Date of argument of appeal, if scheduled: No.

If no, explain why not:

Judge or agency whose order is being appealed:

Hon. CHARLES L. BRIANT

71-7305

Brief statement of the relief requested:

Vacate Dismissal Order and issue new Scheduling Order.

Previous requests for similar relief and disposition:

None.

Statement of the issue(s) presented by this motion:

Fault lies with failure to receive transcript although plaintiff ordered same immediately and proceeded with diligence.

Brief statement of the facts (with page references to the moving papers):

Did not receive Transcript until yesterday, April 16, 1979 although immediate request was made for same (including the payment of cost of same), and notwithstanding numerous requests for same by telephone, letter, and personal visit in order to obtain same. (p.1-3).

Summary of the argument (with page references to the moving papers):

Plaintiff should not be penalized because of the internal deficiencies of the Court in obtaining transcript and initial scheduling order should have been modified by Staff Counsel sua sponte, without the necessity of making a motion for same.

Date April 17, 1979.

The name signed must be printed beneath

GEORGE SASSOWER

ORDER

Kindly leave this space blank.

IT IS HEREBY ORDERED that the motion to vacate dismissal of the appeal.

be and it hereby is granted, denied. Staff counsel will prepare new scheduling order which will be followed by appellant.