

SUPREME COURT : COUNTY OF NEW YORK

SPECIAL TERM : PART I

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GEORGE SASSOWER,

Plaintiff,

- against -

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,
ALAN CROCE, ANTHONY GRIMALSKI, HARRY E.
SEIDELL, NEW YORK NEWS, INC., and
VIRGINIA MATHIAS,

Defendants.

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STECHER, J.:

Plaintiff moves for leave to serve a further amended complaint, and for an order directing defendant Signorelli to answer plaintiff's interrogatories.

In a companion motion, Mastroianni moved to dismiss plaintiff's second cause on the basis of the decision of the Appellate Division in *Sassower v Signorelli* (96 AD 2d, 585) that plaintiff's claim did not state a cause of action in the absence of an allegation that defendant procured the allegedly defamatory publication by affirmative acts. Plaintiff now seeks to supply this missing allegation in a second amended complaint. However, the "privilege of serving an amended pleading rests not only upon formal corrections in the deficient pleading, but also upon an evidentiary showing that the cause of action can be supported" [*Harry Levine Corp. v K. Gimbel Accessories, Inc.*, 41 AD 2d, 637, 638].

No such evidentiary showing is made in plaintiff's affidavits in support of the motion. Conclusory allegations are not enough.

Plaintiff also seeks an order directing Surrogate Signorelli to answer plaintiff's interrogatories for the purpose of serving a further amended complaint. There is no complaint

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