

COURT OF APPEALS : STATE OF NEW YORK

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In the Matter of the Application of
HYMAN RAFFE and GEORGE SASSOWER,

Petitioners-Appellants,

-against-

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

Respondent-Respondent.

For a Writ of Prohibition and other relief,
pursuant to Article 78 of the CPLR.
-----x

APPELLANTS' BRIEF AND APPENDIX

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I N D E X

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JURISDICTIONAL STATEMENT

1. This is an appeal, as a matter of right, from an Order of the Appellate Division of the Supreme Court, dated and entered on May 14, 1985, which originated in that Court which "finally determines" a proceeding, as judicially construed, and directly involves the construction of the Constitution of the United States and State of New York (CPLR §5601(b)[1]).

2a. This proceeding, which had to be commenced in the Appellate Division (CPLR §506(b)[1]), is based on the alleged violation of petitioners' "equal protection" and "double jeopardy" rights.

b. Without any hearing, specifically requested by petitioners, the Appellate Division "denied" such petition "in its entirety", in the Order appealed from (A2), without any formal opinion.

QUESTIONS PRESENTED

1. In view of the statements submitted in the opposing papers, should the petition have been granted, as a matter of law; alternatively, should a hearing have been held?

The Appellate Division responded in the negative.

2. Do events subsequently arising, for which judicial notice may be taken, warrant the relief requested by the petitioners?

Related proceedings presently pend in (a) this Court (State ex rel Geo. Sassower, Esq. on behalf of Sam Polur, Esq. v. Cunningham), (b) the Appellate Division [First and Third Departments], and (c) in the federal forum.

In petitioners' view, the societal interests sought to be served by prohibiting "invidious discriminatory practices" and "double jeopardy" mandates that the Gordian Knot be cut by judicially noticing proceedings that have taken place since the petition herein was served (A3).

In short -- where in more than ten (10) criminal contempt proceedings, not a single constitutional conviction has been rendered, petitioners are entitled to be free of such repeated and continuous privately conducted prosecutions!

Indeed, the situation at bar compels a constitutional study of "non-summary criminal contempt" when it is initiated and prosecuted by private adversarial interests (Polo Fashions v. Stock Buyers, 760 F.2d 698 [6th Cir.]) in view of the legal and ethical obligations of the prosecutor (e.g. Brady v. Maryland, 373 U.S. 83)!

3. Since the interests protected in prohibiting "double jeopardy" and "invidious discrimination" are essentially the same, they are simultaneously treated.

STATEMENT

1a. Resulting from full and massive submissions by all sides, over a period of more than two years, Hon. Martin Evans, by a general order, exonerated petitioners (appellants) of "criminal contempt".

b. Immediately, a flood of substantially similar contempt proceedings were initiated at nisi prius and in the Appellate Division (as original proceedings) by private adversarial counsel, and prosecuted by them and their clients.

c. Petitioners countered with an application for a Writ of Prohibition which was denied.

THE PETITION:

Appellants' petition of April 22, 1985, reads as follows:

"1. On June 4, 1980, Puccini Clothes, Ltd. ['Puccini'], was involuntarily judicially dissolved, title and right of possession of its assets vested in the respondent ['custodia legis'].

2. From the aforementioned date of June 4, 1980, until the present time, now almost five years, no accounting has been filed by the respondent, the trustee of Puccini, or anyone else, on its behalf.

3. Despite the absence of any accounting, the following facts are now uncontrovertable.

a. For about twenty (20) months following the decree of involuntary dissolution, the legally helpless Puccini, had no bonded receiver caring for its assets and affairs on behalf of the respondent.

b. During such period, Puccini's judicially entrusted assets became the subject of a massive larceny, engineered by the firm of Kreindler & Relkin, P.C. ['K&R'], and its clients, Jerome H. Barr, Esq. ['Barr'], and Citibank, N.A. ['Citibank'].

c. Such larceny took and could only have taken place because of the total moral, ethical, and legal abdication of all trust and administrative responsibilities for the helpless Puccini by respondent, including specifically, the person of the Administrative Judge.

d. Eventually, on or about February 1, 1982, Lee Feltman, Esq. ['LF'], was designated as Receiver by respondent, who filed a bond in the sum of \$500,000, a greatly insufficient sum, in view of his actions and activities.

e. From the date of LF's appointment, until date hereof, he and his usurper law firm [22 NYCRR §660.24], Feltman, Karesh & Major, Esqs. ['FK&M'], have made every possible attempt to conceal the aforementioned larceny, including specifically, exposing the perjurious statements denying same by K&R and its clients, resulting in a judgment over against Puccini, their judicial client and trust, in the sum of approximately \$475,000.

f. In a further attempt to conceal the massive larceny that took place, LF and FK&M, petitioned the court to have Rashba & Pokart ["R&P"] appointed as investigatory accountants, concealing from petitioners and the court that R&P were the accountants for K&R and/or its clients.

Additionally, the other law firm charged to have participated in such larceny, Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. ['ANBL&K'], had unlawfully taken \$10,000 from Puccini's trust assets, entered the withdrawal as 'legal', then 'laundered' \$6,200 of it in payment of an invoice to K&R, keeping for itself \$3,800, as its 'laundering charge'.

g. In other ways, LF and FK&M, conspired with K&R and AN&K, always contrary to the interests of their judicial client and trust, including specifically not advising the court that the indemnification agreement under which their client, Puccini, was a third party defendant, was for defensive fees and expenses (for which there was none) only and not for offensive fees and expenses.

h. The agreed quid pro quo for such perfidy by LF and FK&M, was the consent by K&R and ANBL&K (whose clients held a 75% interest in Puccini), to an award of whatever fees FK&M desired from the carrion of Puccini, although, as a matter of law, they were entitled to nothing.

i. After petitioners obtained some 'hard evidence' of the aforementioned larceny, perjury, conspiracy, and corruption, FK&M, essentially on an ex parte basis, on their own behalf and on behalf of their co-conspirators, communicated with the Administrative Judge and/or his office, in an attempt to "obstruct justice" and stonewall legal redress by petitioners, on their own behalf and on behalf of Puccini, the judicial trust.

j. At the time the Administrative Judge agreed to cooperate in this attempt to 'obstruct justice', which simultaneously was contrary to Puccini's interests, he was, by statutory and constitutional standards, clearly disqualified from engaging in any judicially related functions, since both he and members of his Court were being charged in the federal forum with grave allegations of misconduct.

k. To further 'obstruct justice', and deprive Puccini of possible legal protection, the Administrative Judge, commandeered and embraced, Senior Assistant Attorney General, David S. Cook, Esq., the statutory watchdog for Puccini (Business Corporation Law §1214), to be his attorney, the attorney for respondent, and its members.

l. Furthermore, when the Administrative Judge commandeered and embraced, Senior Assistant Attorney General, David S. Cook, Esq., Puccini's statutory watchdog, or shortly thereafter, he had actual knowledge that petitioners had given and were giving the said Senior Assistant Attorney General, David S. Cook, Esq., a great deal of their confidential information regarding the 'rape of Puccini', in an attempt to prevent it from becoming a 'judicial fortune cookie'.

m. The aforementioned alleged misconduct by the aforementioned, including that by the Administrative Judge, and the attempts to conceal same, caused a proliferation of litigation, with even more and greater attempts to unlawfully contain same.

o. The resulting flux from this litigation revealed that the actions, vel non, of the respondent and the Administrative Judge thereof, was one of abdication of all legal, moral, and ethical responsibilities towards Puccini or conduct contrary to respondent's judicial trust.

Otherwise stated, at no time, in no significant respect, has the respondent, acted to advance or protect Puccini's legitimate interests.

The mass resignation of moral, ethical, and legal responsibilities by the respondent to Puccini, is due, in almost all respects, to the actions, conduct, and conspiratorial desires of the Administrative Judge, LF, and FK&M.

p. The resulting flux from this litigation also reveals that the actions of the petitioners has, in every discretionary respect, been to advance the legitimate interests of Puccini.

As a result thereof, the respondents, in cooperation with LF and FK&M, have actively pursued and harassed the petitioners, employing in large part Puccini's judicially entrusted assets.

Thus, Puccini's own judicially entrusted assets, have been used to obstruct petitioner's attempts to aid its legitimate ends.

4a. In order to prevent and obstruct petitioner's efforts in aiding Puccini, and revealing the larceny, perjury, corruption, conspiracy, and perfidy of LF, FK&M, K&R, ANBL&K, and respondents, in or about November 1982, LF and FK&M commenced criminal contempt proceedings against the petitioners, contending, inter alia, that petitioners violated several orders of nisi prius.

b. As a result of such proceedings, and after a massive submission by LF and FK&M, both respondents were absolved of criminal charges, but against petitioner, George Sassower, Esq., the minimal fine of \$250 for civil contempt was imposed by Order dated December 14, 1984.

5a. Despite the aforementioned absolution from criminal contempt charges, new and repeated criminal contempt charges are made against petitioners, by or with the cooperation of those acting under 'color of law', employing in large part, Puccini's judicially entrusted assets.

b. In other ways, manners, and respects, the petitioners are being denied their constitutional rights, including equal protection of the laws, by this invidious and discriminatory pursuit of them by the respondent and those acting on its behalf.

6a. As a result of the Order of December 14, 1984 [entered January 4, 1985], absolving petitioners of criminal contempt, based on the same or substantially same conduct, petitioners are entitled to be protected from being placed in 'double jeopardy', in each and every court under the jurisdiction of the United States Constitution.

b. Despite the aforementioned, 'double jeopardy' rights, the same or substantially similar criminal contempt charges are being repeatedly asserted against respondents both in this Court and at nisi prius, all presided over by members of respondent.

WHEREFORE, it is respectfully prayed that an Order be entered setting this matter down for a constitutionally conducted hearing to determine whether petitioners 'equal protection of the laws' rights are being violated and/or for a Writ of Prohibition against the respondents based upon 'double jeopardy', together with any other, further, and/or different relief as to this Court may seem just and proper in the premises."

THE RESPONDENT:

1. Senior Assistant Attorney General David S. Cook, Esq., on behalf of the respondent, did not deny in form or substance, directly or indirectly that petitioners were not being prosecuted discriminatorily.

2. On the issue of "double jeopardy", on behalf of the respondent, he stated [A6-A7]:

"7. The Fifth Amendment to the United States Constitution states in pertinent part: '...nor shall any person be subject for the same offence (sic) to be twice put in jeopardy...' [emphasis supplied]

8. Upon information and belief, any new contempt charges brought against petitioners are based upon new and repeated violations by them of various orders of certain justices, not upon the same acts for which the previous contempt charges were brought.

9. It is respectfully submitted that petitioners are not being subjected to jeopardy twice for the same offense."

KREINDLER & RELKIN, P.C.

1. The firm of Kreindler & Relkin, P.C., the architects of the larceny of judicially entrusted assets, who concealed same for more than three years by perjurious affidavits, submitted an opposing affidavit, which stated, in part [A9-A10]:

"Sassower ... appears to argue that he and Raffae should be absolved from being held accountable for their repeated contempt However, despite Justice Evans'

order, Sassower and Raffe have continued upon their contemptuous conduct. Thus, two motions were made by Kaufman's Estate, both returnable on April 26, 1985 in this Court, seeking to hold Raffe and Sassower in contempt for their further violations of the order of Justice Sinclair disqualifying Sassower as attorney for Raffe in matters pending in Supreme Court New York County under Index No. 16792/80 and 1816/80. ... Each such violation of the court's order constitutes a separate contempt, and contempt motions are pending in Special Term as the result of such conduct.

5. It is the height of arrogance for Raffe and Sassower herein to take the position that they are absolved from all penalties for future violations of court orders ..."

2. Here also there was no denial, in form or substance, direct or indirect, that petitioners were not in fact being made the subject of invidious discriminatory practices.

3. Think of it -- Kreindler & Relkin, P.C. having engineered the massive larceny of judicially entrusted assets, submitted perjurious affidavits denying same, and having become engaged in a charted course of corruption, acting as the public prosecutor against those who exposed their activities.

THE ORDER OF MR. JUSTICE EVANS:

1. The Order of Mr. Justice Evans absolved both petitioners of criminal contempt.

Nevertheless, the Order imposed upon Sassower a fine of \$250 for civil contempt. Sassower immediately filed a Notice of Appeal, and moved to reargue and renew, presently sub judice, asserting, inter alia:

a. The criminal contempt proceeding triggered petitioners' right not to incriminate themselves (Gompers v. Buck Stove, 221 U.S. 418, 448), and thus Sassower was precluded from making an appropriate presentation against a finding of civil contempt.

b. Sassower's exposed the larceny of judicially entrusted assets, perjury, and corruption was under the aegis of an action bearing index number 21208/78 and a federal action, where he was not disqualified.

c. There is no evidence that Sassower's actions were "calculated to, or actually did, defeat, impair, impede, or prejudice the rights of [Puccini, Dann, and Sorrentino] ...". Indeed, in exposing such larceny of trust funds, a very substantial benefit resulted to them.

2. A Notice of Cross-Appeal was filed, the contention made by the criminal prosecutors was that Mr. Justice Evans should have found Sassower in criminal contempt.

Sassower, contending that "double jeopardy" was involved in such cross-appeal, moved to dismiss at the Appellate Division, but same was denied.

MR. JUSTICE EVANS -- REVISITED:

1. One of the numerous criminal contempt proceedings brought after the exoneration of petitioners by Mr. Justice Evans was submitted to His Honor.

2. Such submission caused the issuance of an interim order dated April 5, 1985 by Hon. Martin Evans, which clearly manifests His Honor's intent, if that be indeed necessary, that "double jeopardy" attached to his prior order of December 14, 1984.

Such interim order reads as follows:

"Upon the foregoing papers this motion by receiver Feltman, seeking to obtain an Order punishing George Sassower, Esq. for

criminal contempt of court is respectfully referred to Hon. Donald Diamond, Special Referee, pursuant to the administrative order of Hon. Xavier Riccobono, J.S.C. (3/26/84). The cross-motion by respondent Sassower seeking to renew his opposition to a prior motion for contempt which resulted in this court's civil contempt (12/14/84), is also so referred. Both motions raise questions of fact which cannot be determined on papers alone. Insofar as matters raised as predicate for the contempt order sought here may have been asserted as predicate for the previous contempt order and insofar as movant there asserted that they constituted criminal contempts, they cannot be reasserted here. To the extent that respondent Sassower asserts that there may be a distinction between the literal reading of the disqualification order of Mr. Justice Sinclair and the intent of Mr. Justice Sinclair, respondent Sassower should, if so advised, seek appropriate relief by motion addressed to Mr. Justice Sinclair." [emphasis supplied]

THE APPELLATE DIVISION:

1. Two of the many motion for contempt against petitioners, were brought directly, as an original proceeding, in the Appellate Division.

2a. In both motions, the petitioner Raffe was exonerated.

b. The (interim) dispositions of the Appellate Division, dated May 21, 1985, is the same in both instances, and reads as follows:

"It is ordered that determination of the motion be and the same hereby is held in abeyance, hearing and determination of the aforesaid appeals are hereby adjourned until the further order of this court, and the issue as to whether George Sassower, Esq., is in violation of any outstanding order of this or any other Court is referred to the Office of the Special Referee of the Supreme Court, New York County, 60 Center Street, New York, New York, Room 308M, for said purpose."

c. There presently pends a proceeding by Sassower to dismiss same for failure to afford him a speedy hearing.

AT NISI PRIUS:

1. Despite the Orders of the Appellate Division, by orders dated June 26, 1985 and entered July 1, 1985, for the same conduct complained about at the Appellate Division, Mr. Justice David B. Saxe and Mr. Justice Alvin F. Klein held:

2. Mr. Justice Saxe:

a. Without a trial or hearing, Mr. Justice Saxe convicted and sentenced Sassower to be incarcerated for a period of ten days for non-summary criminal contempt, which he served.

b. Sam Polur, Esq. ["Polur"], representing Raffé, was exonerated.

3. Mr. Justice Klein:

a. Without a trial or hearing, Mr. Justice Klein, convicted and sentenced Polur to be incarcerated for a period of thirty days, which he served.

Polur was convicted for the exact same act (serving a summons) for which he was simultaneously exonerated by Mr. Justice Saxe.

b. Without a trial or hearing, Mr. Justice Klein, convicted and sentenced Sassower to be incarcerated for a period of thirty days for non-summary criminal contempt, which he served.

Thus, while the Appellate Division, for the same general conduct, set the matter down for a hearing, Mr. Justice Klein, without any trial or hearing convicted and sentenced Sassower!

c. Without a trial or hearing, Mr. Justice Klein, convicted and sentenced Raffé to be incarcerated for a period of thirty days for non-summary criminal contempt, which petitioners claim he fully served (5 Am Jur2d, §§1, 78, pp. 695, 764; People ex rel Bilotti v. Warden, 42 A.D.2d 115, 345 N.Y.S.2d 584 [1st Dept.]).

Thus, Raffe was convicted and sentenced, without any trial or hearing, for conduct which the Appellate Division and Mr. Justice Evans exonerated him for.

4. The Orders of Mr. Justice Saxe and Mr. Justice Klein were immediately perfected and are scheduled to be heard during the September 1985 Term of the Appellate Division. A stay pending such appeal was denied.

THE WRIT OF HABEAS CORPUS:

Proceedings on the various writs of habeas corpus in the Supreme Court, the Appellate Division (original proceeding), and the federal courts are summarized as follows:

1. Nisi Prius -- Although the terms of (short) incarceration were to expire before the appeals were to be heard, the remedy, according to nisi prius, is not habeas corpus but by appeal.

2. For 800 years, the traditional writ of habeas corpus ad subjiciendum was only concerned with the legality of the incarceration.

In 1985 (State ex rel George Sassower, Esq., on behalf of Sam Polur, Esq., v. Cunningham), the Appellate Division (without any presentment by the relator) nevertheless, delved into the merits, to the point that it commented (adversely) on the failure to deny the accusation!

For petitioner one could not be constitutionally convicted and sentenced for non-summary criminal contempt without a trial (Bloom v. Illinois, 391 U.S. 194). The Appellate Division obviously believes otherwise, at least where the writ is concerned.

3. United States District Court -- The sole issue is exhaustion of state remedies, even though the term of incarceration will begin and end before state exhaustion could be accomplished. Thus, the matter pends in the Circuit Court of Appeals.

THE APPELLATE DIVISION -- REVISITED:

1. Stays pending the hearing of the appeals of the orders of Mr. Justice Saxe and Klein were, as heretofore stated, denied.

2. A Writ of Prohibition against Mr. Justice Saxe and Mr. Justice Klein based on "double jeopardy", was made returnable by the Court for September 10, 1985 (after the sentences of incarceration had been served).

"BORN IN THE U.S.A."

At the Bronx Mens' House of Detention, the radio continuously blasts, with about every third song being "Born in the U.S.A."

The U.S.A., where they are now convicting and incarcerating born therein without affording them a trial!

The U.S.A., where the historic writ of habeas corpus ad subjiciendum has not been abrogated and/or suspended!

The U.S.A., where you first are sentenced, incarcerated, and thereafter tried, if at all!

POINT I

PETITIONERS ARE ENTITLED TO A WRIT OF PROHIBITION

1a. When the issues are selective enforcement and/or double jeopardy, the guilt or innocence of the accused is irrelevant, and petitioners have no intention of desecrating the constitutional spirit by engaging into the merits of the controversy.

b. This was petitioners position on their various writs, and they believe they were correct.

c. In petitioner's view, unless there is plea of "guilty", in all criminal proceedings, including non-summary criminal contempt, in all american courts, as a matter of ministerial compulsion, the courts have no jurisdiction to convict and incarcerate without a trial (Bloom v. Illinois, supra)!

2a. All citizens "born or otherwise" in the U.S.A. are entitled to equal protection of the laws, and all branches of government, including the judiciary, are prohibited from invidious and selective prosecution and enforcement (People v. Utica Daw's Drug, 16 A.D.2d 12, 17, 225 N.Y.S.2d 128, 132-133 [4th Dept.]).

b. The papers submitted to the Appellate Division and the factual material shown herein, reveal that petitioners should be afforded an opportunity to prove their contention of invidious and selective enforcement (Village of Kenmore v. Neiss, 96 A.D.2d 1146, 467 N.Y.S.2d 458 [4th Dept.]).

c. Where control of criminal proceedings are given to private adversarial interests, as in non-summary criminal contempt, the extent and intensity of the prosecution obviously depends on the availability of adversarial resources and the intensity of the private desires.

None of the legal obligations due by a prosecutor to the accused, do not and cannot exist when the criminal prosecution is by an adversary (Polo Fashions v. Stock Buyers, supra; Brady v. Maryland, supra).

Where, as here, larceny, perjury, and corruption are exposed, it is constitutionally improper to give the criminal process to those exposed.

d. Unless private criminal prosecutions are judicially controlled, they deprive the accused of due process, and indeed, as at bar, constitute an illegal prosecution.

3a. The opposing papers at the Appellate Division, the interim order of Hon. Martin Evans, and the facts themselves, reveal that the constitutional and statutory prohibition of repeated prosecutions are being clearly violated (Ashe v. Swenson, 397 U.S. 436; Criminal Procedure Law §40.20).

b. At bar, not only is "double jeopardy" being violated resulting in harassment and needless anxiety, but in violation of constitutional and statutory guarantees, terms of incarceration have already been fully served.

4. It takes a vivid imagination to conceive that one month after the Appellate Division vindicates Hyman Raffe, nisi prius convicts and sentences him to be incarcerated without a trial.

For the exact precise act, Sam Polur, Esq. is, on the same day, exonerated by one judge and convicted and sentenced to be incarcerated, without any trial, by another for non-summary criminal contempt.

For the same conduct which the Appellate Division Division directed a hearing, nisi prius, one month later, convicts and sentences, George Sassower, Esq., to served 30 and 10 days incarcerated, all without any trial.

5a. Any trial that may be held, will be after the sentences of incarceration are served, according to the courts below.

b. It is not only "double jeopardy" and invidious and selective prosecution, but also cruel and inhuman punishment proscribed by the State and Federal Constitutions (Amendments VIII and XIV of the U.S. Constitution and Article 1, §5 of the New York State Constitution).

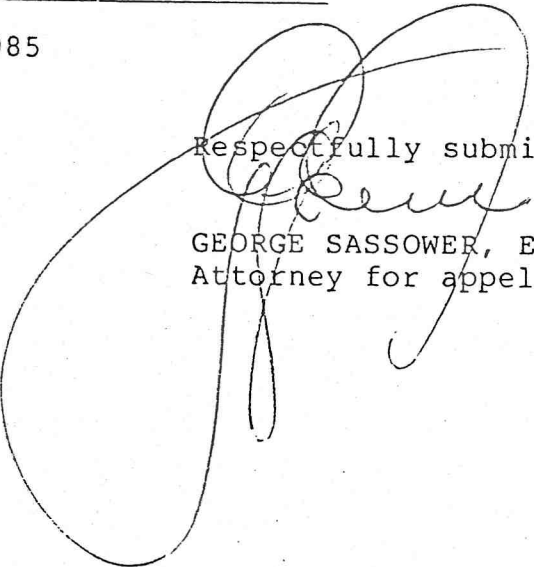
6. Some of these prosecutions are still pending sub judice and more are threatened!

CONCLUSION

THE ORDER APPEALED FROM SHOULD BE
REVERSED, WITH COSTS.

Dated: August 25, 1985

Respectfully submitted,



GEORGE SASSOWER, Esq.
Attorney for appellants.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

-----x

In the Matter of the Application of
HYMAN RAFFE and GEORGE SASSOWER,

Petitioners,

-against-

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

Respondent.

-----x

S I R S:

PLEASE TAKE NOTICE, that petitioners
above named hereby appeal to the Court of Appeals, State
of New York from an Order of the Appellate Division of
the Supreme Court of the State of New York, First
Judicial Department, dated and entered on May 14, 1985,
and from each and every part thereof.

Dated: June 8, 1985

Yours, etc.

GEORGE SASSOWER, Esq.
Attorney for petitioner
2125 Mill Avenue,
Brooklyn, New York, 11234
718-444-3403

To: Hon. Robert Abrams

Form E

At a term of the Appellate Division of the Supreme Court
held in and for the First Judicial Department in the County of
New York, on May 14, 1985.

Present—Hon. Leonard H. Sandler, Justice Presiding,
David Ross,
Max Bloom,
E. Leo Milonas,
Betty Weinberg Ellerin, Justices.

In the Matter of the Application of
Hyman Raffé and George Sassower,
Petitioners,

-against-

Justices of the Supreme Court of the
State of New York, County of New York,
Respondents.

M-2152

For a Writ of Prohibition and other relief,
pursuant to Article 78 of the CPLR.

The above-named petitioner, George Sassower, having
moved for an order of this Court setting the above-entitled matter
down for a constitutionally conducted hearing to determine whether the
movant's rights have been violated and/or for a writ of prohibition
against the respondents based upon "double jeopardy,"

Now, upon reading and filing the notice of motion,
with proof of due service thereof, and the papers filed in support
of said motion and the papers filed in opposition or in relation
thereto; and due deliberation having been had thereon,

It is ordered that the motion be and the same hereby
is denied in its entirety.

ENTER:

HAROLD J. REYNOLDS

Clerk.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

In the Matter of the Application of
HYMAN RAFFE and GEORGE SASSOWER,

Petitioners,

-against-

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

Respondent.

For a Writ of Prohibition and other relief,
pursuant to Article 78 of the CPLR.

S I R S:

PLEASE TAKE NOTICE that upon the annexed
petition of GEORGE SASSOWER, Esq., verified the 22nd day
of April, 1985, one of the petitioners, and upon all the
pleadings and proceedings had heretofore herein, the
undersigned will cross-move this Court at a Stated Term
of the Supreme Court of the State of New York, Appellate
Division, First Department, held at the Courthouse
thereof, 25th Street and Madison Avenue, in the Borough
of Manhattan, City and State of New York, on the 26th
day of April, 1985, at 9:30 o'clock in the forenoon of
that day or as soon thereafter as petitioner may be
heard for an Order setting this matter down for a
constitutionally conducted hearing to determine whether

petitioners "equal protection of the laws" rights are being violated and/or for a Writ of Prohibition against the respondents based upon "double jeopardy", together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

Dated: April 22, 1985

Yours, etc.

GEORGE SASSOWER, Esq.
Attorney for petitioner
2125 Mill Avenue,
Brooklyn, New York, 11234
718-444-3403

To: Justices of the Supreme Court, N.Y. Co.
Hon. Robert Abrams
Kreindler & Relkin, P.C.
Feltman, Karesh & Major, Esqs.
Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

-----X
In the Matter of the Application of :
HYMAN RAFFE and GEORGE SASSOWER,

Petitioners, :

-against- :

AFFIDAVIT IN
OPPOSITION

JUSTICES OF THE SUPREME COURT OF THE :
STATE OF NEW YORK, NEW YORK COUNTY,

Respondents. :

-----X
STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DAVID S. COOK, being duly sworn, deposes and says:

1. I am a Senior Attorney in the office of ROBERT ABRAMS, Attorney General of the State of New York, attorney for respondents Justices of the Supreme Court of the State of New York, County of New York.

2. I make this affidavit in opposition to this, the twentieth Article 78 proceeding brought in this Court by petitioner Raffe or his attorney Sassower.

P-0

3. The petition herein purports to seek relief in the nature of prohibition.

4. An Article 78 proceeding for such relief will lie only when the respondent is alleged to be proceeding or about to proceed in excess of or without jurisdiction. CPLR § 7803(2).

5. The petition herein is devoid of any allegation that respondents have so acted.

6. Even if the petition be construed so liberally that the allegations with respect to double jeopardy (§6) be deemed to raise an issue of respondents' jurisdiction, the petition will not lie.

7. The Fifth Amendment to the United States Constitution states in pertinent part: "...nor shall any person be subject for the same offence (sic) to be twice put in jeopardy..." [emphasis added].

8. Upon information and belief, any new contempt charges brought against petitioners are based upon new and repeated violations by them of various orders of certain

justices, not upon the same acts for which the previous contempt charges were brought.

9. It is respectfully submitted that petitioners are not being subjected to jeopardy twice for the same offense.

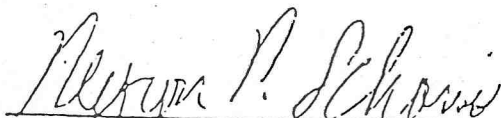
10. Finally, it should be noted that this proceeding is defective, in that it was served upon deponent on Monday, April 22, 1985 and noticed to be heard only 4 days later, April 25, 1985. CPLR § 7804(c) provides that service upon an adverse party shall be at least twenty days in advance of the hearing date. Further, upon information and belief, none of respondents as individual justices were served. In view of these facts if this Court decides to entertain this petition, it is respectfully requested that it do so only upon proof of service on respondents and after affording them adequate time to properly answer or move pursuant to CPLR § 7804(c).

11. It is respectfully requested that the petition herein be denied with costs and reasonable attorney's fees or, in the alternative, that it be decided only upon due compliance with the service and time requirements of CPLR § 7804(c).



DAVID S. COOK

Sworn to before me this
25th day of April, 1985



Assistant Attorney General
of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - FIRST DEPARTMENT

-----X
In the Matter of the Application of :
HYMAN RAFFE and GEORGE SASSOWER,

Petitioners, :

AFFIDAVIT IN OPPOSITION

-against-

Justices of the Supreme Court of the :
State of New York, County of New York

Respondent. :

For a Writ of Prohibition and Other :
Relief Pursuant to Article 78 of the
CPLR

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MICHAEL J. GERSTEIN, being duly sworn, deposes and
says:

1. I am a member of the firm of Kreindler & Relkin,
P.C., attorneys for Jerome H. Barr and Citibank, N.A., as
Executors of the Will of Milton Kaufman ("Kaufman's Estate").
I am fully familiar with the facts set hereinbelow. I submit
this affidavit in opposition to the petition herein seeking
"a hearing to determine whether petitioners 'equal protection
of the laws' rights are being violated and/or for a Writ Of
Prohibition", purportedly based upon double jeopardy.

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2. The petition should be denied herein as being totally frivolous, insufficient as a matter of law, and totally unwarranted by the facts. Accordingly, it should be dismissed.

3. The first portion of the petition herein (pages 1-6) consist of Sassower's totally inaccurate factual allegations, which allegations have been rejected time and time again by every jurist to have ruled upon them over the course of the last five years. In the interest of brevity, no response will be made thereto, except to categorically deny the accuracy of such allegations, and to note that such allegations are totally irrelevant to the relief being sought herein.

4. At page 7 of the petition, Sassower finally appears to argue that he and Raffae should be absolved from being held accountable for their repeated contempts of court by the fact that Sassower has been found in contempt of court by order of Justice Martin Evans dated December 14, 1984. However, despite Justice Evans' order, Sassower and Raffae have continued upon their contemptuous conduct. Thus, two motions were made by Kaufman's Estate, both returnable on April 26, 1985 in this Court, seeking to hold Raffae and Sassower in contempt for their further violations of the order of Justice Sinclair disqualifying Sassower as attorney for Raffae in matters pending in Supreme Court New York

County under Index No. 16792/80 and 1816/80, and of the order of this Court dated January 15, 1985. In addition, Sassower and Raffé have continued their contemptuous conduct by contumaciously violating an order issued by Honorable Ira Gammernan on January 23, 1985, which order broadly enjoined Raffé, Sassower and anyone acting in concert or cooperation with either of them from commencing further suits against, inter alia, Kaufman's Estate, or my firm as attorneys for Kaufman's Estate. Three new lawsuits have been commenced by Raffé, represented in each case by Sassower, in the month of April 1985, plus additional suits which have been commenced subsequent to Justice Gammernan's order. Each such violation of the court's order constitutes a separate contempt, and contempt motions are pending in Special Term as the result of such conduct.

5. It is the height of arrogance for Raffé and Sassower herein to take the position that they are absolved from all penalties for future violations of court orders because they have been found in contempt for past such violations. Indeed, considering that the punishment imposed upon them by Justice Evans has apparently not deterred future violations, a much harsher penalty appears appropriate for any future findings of contempt.

6. In addition, as pointed out in the affidavit of David S. Cook, Senior Attorney in the New York State Attorney General's Office, the petition herein is legally insufficient in that it is not claimed that the respondent Justices have acted in excess of their jurisdiction. See CPLR 7803(2).

WHEREFORE, it is respectfully requested that the petition herein be dismissed, and that Kaufman's Estate have such other further and different relief as the Court may deem just and proper.

MICHAEL J. GERSTEIN

Sworn to before me this
1st day of May, 1985.

NOTARY PUBLIC

ANGELIKA A. RADYOS
Notary Public, State of New York

Total: 1000 87