

COURT OF APPEALS : STATE OF NEW YORK

-----x
HYMAN RAFFE,

Plaintiff-Appellant,
[GEORGE SASSOWER, Esq.,
Appellant,]

-against-
FELTMAN, KARESH & MAJOR,
Defendant-Respondent.
-----x

JURISDICTIONAL STATEMENT

- a. 1. The title of the case appears above.
2. The appeal is taken from an Order of the Appellate Division of the Supreme Court, First Judicial Department, finally determining an action directly involving the construction of the Constitutions of the State of New York and of the United States (CPLR §5601[b][1]), in a number of respects.
3. The notice of appeal was served and filed on September 20, 1985.
4. The Order appealed from, with notice of entry was never served.
5. Feltman, Karesh & Major, Esqs.
55 East 52nd Street,
New York, New York, 10055
(212) 371-8630
- Robert Hermann, Esq.
Solicitor General
c/o Hon. Robert Abrams
Attorney General, State of New York
The Capitol,
Albany, New York, 12224
- b. 1. The Notice of Appeal is annexed hereto (Exhibit "A").
2. The Order appealed from is annexed hereto (Exhibit "B").
3. None.

4. There was no opinion by the Appellate Division.

5. The Order of the Supreme Court, New York County is dated June 26, 1985 [entered July 1, 1985] (Exhibit "C").

6. The Opinion of Hon. David B. Saxe, Acting Justice of the Supreme Court. is dated May 9, 1985 (Exhibit "D").

STATEMENT OF ESSENTIAL FACTS

Since an expeditious summary reversal is requested, this jurisdictional statement, is submitted in expanded form.

* * *

1a. Appellant, an attorney, without a trial or other fundamental rights of a constitutional (federal and state) magnitude, was convicted, sentenced and incarcerated, in addition to being fined, for non-summary criminal contempt.

b. Appellant's plea, for which he was not given any trial or hearing, was: (1) not guilty; (2) double jeopardy; (3) invidious and selective enforcement by private adversarial attorneys; and (4) the respondents' motion did not meet the constitutional and statutory pleading and notice requirements for contempt, civil or criminal (A44).

Specific assertions and evidence was submitted in support of all of the above defensive assertions, essentially uncontroverted by respondents, nevertheless, the courts below blithely ignored such pleas in convicting appellant, without trial, hearing, or allocution.

c. Extant at the time respondents' requested that their motion (and appellants' cross-motion) be referred to Hon. David B. Saxe were actions by appellants against His Honor personally, for money damages, in the state and federal courts.

When Mr. Justice Saxe revealed an unnatural solicitude for the respondents (infra Point IV), appellant gave, and continued to give, his confidential information, regarding, inter alia, the suspect actions of His Honor to Senior Assistant Attorney General, David S. Cook, Esq., the statutory watchdog for Puccini Clothes, Ltd. (Business Corporation Law §1214).

Undeniably some of such confidential information given to Cook was given to Mr. Justice Saxe, when in such subsequently brought legal actions, it was Mr. Cook and his close colleague were commandeered to represent Mr. Justice Saxe in such damage suits.

d. In addition thereto, there was pending in the Appellate Division, appeals from the Judgment and Orders of His Honor, extraordinarily critical, legally, ethically, and morally, of Mr. Justice Saxe.

2a. The charge against appellant was that he caused to be prepared and caused to be served, a blank summons with notice against the respondents on federally based causes of action, permitted to be brought in the state courts -- nothing more!

b. Additionally, appellants' sought to have determined as unconstitutional CPLR §5222[b], insofar as it permits restraint "equal to twice the amount due".

c. Respondents claimed that appellants violated an Order of Mr. Justice Ira Gammerman, dated January 23, 1985, which appellants insist is absurd.

Without conceding that the aforementioned Order of Mr. Justice Gammerman is valid, Cook concedes, its terms notwithstanding, this Order has no legal effect on him, his office [the Attorney General], or their clients.

Another firm of attorneys have sub silentio made the same concession.

Appellants claim, without conceding that the said Order was violated, that such Order was obtained without personal and subject matter jurisdiction, and corruptly.

Indeed, in none of the submitted papers, including the Order of Mr. Justice Saxe, is it contended that the Order violated was or is a "lawful mandate" (Judiciary Law §750A[3]).

3a. Mr. Justice Saxe dismissed the action based on a blank summons with notice, pursuant to CPLR 3211[a](1), (3), and (5), although immediately prior thereto, Mr. Justice Kenneth Shorter held in a related proceeding that dismissal at the threshold was an appropriate motion, where permission was not obtained for the commencement of the action.

b. Additionally, appellants claim that assuming arguendo that the Order of Mr. Justice Gammerman is valid; assuming arguendo, His Honor permission was necessary to commence a lawsuit; there is nothing in the Order which makes necessary His Honor's permission to commence an action based on conduct subsequent to the Order, as existed at bar.

Certainly, incarceration, without a trial, cannot be imposed, where there was no prior warning of such penal consequences.

POINT I

CONSTITUTIONAL LIMITATIONS (FEDERAL AND STATE), PROHIBIT ANYONE FROM BEING CONVICTED, SENTENCED, AND INCARCERATED FOR ANY CRIME, ABSENT A PLEA OF GUILTY, WITHOUT A TRIAL.

1a. Since Bloom v. Illinois (391 U.S. 194), absent, as here, a plea of guilty, as a matter of ministerial constitutional compulsion all american courts and all american judges, are without the jurisdictional power to convict, sentence and incarcerate for non-summary criminal contempt, without a trial and other fundamental criminal rights!

b. Absent constitutional waiver, the confrontation clause contained in the VI Amendment of the United States Constitution, is, inter alia, the federally imposed death-knell (Amendment XIV; Pointer v. Texas, 380 U.S. 400) to any pretention of legality to the aforementioned state conviction and incarceration.

The conviction and incarceration herein also violates Article 1 §6 of the New York State Constitution.

c. The manifest illegality of the aforementioned conviction is such that no one has been able to cite a single extant authoritative case in this state, and since Bloom v. Illinois (supra) in the United States, to support appellant's conviction!

Such authority, simply does not exist, even as a matter of specious argument, the Order of the Appellate Division, rendered without opinion, notwithstanding!

d. The right to such constitutional trial and trial rights do not exist by reason of judicial grace or discretion, but are a ministerial obligation of the courts, and appellant has adamantly refused, and will continue to refuse, to negotiate or give a quid pro quo for the enjoyment of such rights, or habeas corpus relief!

e. The point is made, when it is recognized that the Klu Klux Klan, in their heyday of power, gave the untried a "drumhead trial", before execution of sentence. Appellant did not even obtain that much!

POINT II

IN UNDERLYING CIVIL PROCEEDINGS, NON-SUMMARY CRIMINAL
CONTEMPT CANNOT CONSTITUTIONALLY BE INITIATED,
PROSECUTED, AND CONTROLLED BY PRIVATE
ADVERSARY COUNSEL.

1a. Whatever view may have existed at one time, the Supreme Court of the United States began to recognize that the accused in the federal courts were entitled to all the fundamental criminal rights in criminal contempt proceedings (Gompers v. United States, 233 U.S. 604, Gompers v. Buck Stove, 221 U.S. 418; Cooke v. United States, 267 U.S. 517).

b. In Bloom v. Illinois (supra), the essential panoply of fundamental criminal constitutional rights existing in ordinary criminal cases were imposed upon the state courts in non-summary criminal contempt situations. As the Court noted (p. 207):

"In modern times, procedures in criminal contempt cases have come to mirror those used in ordinary criminal cases."

c. The criminal rights of a defendant include the fulfillment of prosecutorial obligations (Brady v. Maryland, 373 U.S. 83; Berger v. United States, 295 U.S. 78).

Thus, there is a legal, moral, ethical, and professional decisive conflict in a private attorney's obligation to his client and his obligations under a United States v. Agurs (427 U.S. 97) demand!

The recent case of Polo Fashions v. Stock Buyers (698 F.2d 698 [6th Cir.]) has recognized that non-summary criminal contempt proceedings cannot be controlled by the private adversary counsel in the underlying civil litigation.

d. Where the criminal prosecution is controlled by private adversarial counsel it is not dependent upon the alleged transgressions or the degree thereof, but on the intensity of the private litigation and resources of the litigants.

At bar, because appellants have uncovered extensive larceny of judicial entrusted funds, perjury, and corruption, they, the innocent ones, are being prosecuted and persecuted by the transgressors.

At bar, appellant, a single practitioner, is facing the combined forces and resources of Citibank, N.A., a judicial trust, the Attorney General, and the power and prestige of an errant judiciary!

Criminal justice and constitutional rights, has become totally irrelevant, as invidious and selective enforcement is pursued to conceal official and judicial corruption!

POINT III

APPELLANTS' CONSTITUTIONAL RIGHT TO PETITION GOVERNMENT WAS SUBSTANTIALLY ABROGATED.

1. Amendment I of the United States Constitution gives recognition to one's right to petition government, and Article 1 §9 of the New York Constitution explicitly recognizes one's right to petition "any department thereof" of government.

These are preferred constitutional rights!

2. The specific commandeering and assignment of Senior Assistant Attorney General David S. Cook, Esq., to represent Hon. David B. Saxe, after appellants had given him personally their confidential information, on behalf of the Attorney General, was a legal, moral, and ethical abomination of the first magnitude, in addition to a substantial interference with appellants' constitutional right to petition his government without retribution.

3. The assignment of Cook was optional, since he was but one of many assistant attorney generals who could have been assigned to represent Mr. Justice Saxe in appellants' lawsuits.

POINT IV

THE ORDER OF MR. JUSTICE DAVID B. SAXE IS
CONSTITUTIONALLY, AND BY STATUTE, VOID.

1. Whether the litigation be civil or criminal, the parties are by the due process clauses of the constitution, and by statute (Judiciary Law §14), entitled to a fair and impartial tribunal!

a. There was and is extant federal and state litigation pending, for money damages, against Mr. Justice David B. Saxe by the appellants.

Consequently, the specific reference of this motion and cross-motion, and His Honor's acceptance of such judicial function, duly protested by appellants, denied appellants' their constitutional right to due process. It was an outrage!

2. There was pending in the Appellate Division, appeals from the Judgment and Orders of Judge Saxe, wherein His Honor's determinations were, ante litem motom, described as:

"legally and ethically, ... 'the rankest compound of villainous smell that ever offended nostril' (Shakespeare's, Falstaff, Merry Wives of Windsor, III:v)".

In that proceeding, pending in that appellate court, the "Questions Presented" were:

"1Q. Could nisi prius award very substantial fees to those whose appointment were in violation of the mandatory, ministerial, non-discretionary provisions contained in 22 NYCRR §660.24, despite the in haec verba prohibition contained therein [subd. 'f']?"

A. Mr. Justice Saxe, replied in the affirmative by simply ignoring the rule's existence.

2Q. Where the Attorney General, as the legal representative of the 'Justices of the Supreme Court, New York County', represented to this Court, in an Article 78 proceeding, that this Court should presume that his judicial clients give obedience to 22 NYCRR §660.24, did Mr. Justice Saxe have the lawful authority to wilfully disobey same?

A. Mr. Justice Saxe, replied in the affirmative again simply disregarding the representations of his attorney to this Court.

3Q. Where the firm of Feltman, Karesh & Major, Esqs. ['FK&M'], followed a deliberate charted course of corruption and betrayal of the interests of Puccini Clothes, Ltd. ['Puccini'], to its substantial damage, is that firm precluded from recovering monies from the carcass of the court's helpless judicial trust?

A. Mr. Justice Saxe, replied in the negative.

4Q. Where the firm of FK&M has not, and cannot, show any substantial services intended to, or which benefited Puccini, can they recover substantial fees for legal services?

A. Mr. Justice Saxe awarded FK&M everything they requested -- down to the very last half-penny!

5Q. Where the firm of Rashba & Pokart ['R&P'], as investigatory accountants, accepted a judicial assignment, are they entitled to substantial compensation where they did not disclose that they represented Kreindler & Relkin, P.C. ['K&R'], and/or its clients in the matter, all of whom were the subjects of appellants' accusations?

A. Mr. Justice Saxe, replied in the affirmative, giving the receiver a blank check to give to these accountants anything they desired from Puccini.

6Q. Where the firm of Rashba & Pokart, as investigatory accountants, accepted a judicial assignment, are they entitled to any compensation where they did not disclose that they previously received substantial 'laundered' funds from Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. ['ANBL&K'], also the subject of appellants' accusations, in payment of an invoice rendered to K&R, the funds unlawfully taken from Puccini, the judicial trust, and entered as a 'legal' disbursement on Puccini's books?

A. Mr. Justice Saxe, replied in the affirmative, giving the Rashba firm a blank check from the judicial trust.

7Q. Where there is an overall agreement to commit larceny, perjury, and corrupt justice by K&R, ANBL&K, FK&M, and R&P, may the court financially underwrite same from the judicial trust?

A. Mr. Justice Saxe, replied in the affirmative.

8Q. Is a claim for fees by Feltman, Karesh & Major, Esqs., from Puccini, a farce and mockery of justice, when Lee Feltman, Esq., their senior partner, is supposed to represent Puccini, and then never bothers to appear or oppose such application?

A. Mr. Justice Saxe, saw nothing improper in such a legal proceeding or the conduct of the receiver in not opposing the application.

9Q. Could appellants', who independently had substantial financial interests in Puccini, be constitutionally and legally precluded from defending the claims against Puccini by FK&M and R&P, under the circumstances at bar?

A. Mr. Justice Saxe answered in the affirmative.

10Q. Where Senior Assistant Attorney General David S. Cook, Esq., who, except for titular superiors, is a one man unit in the Attorney General's Office assigned to vouchsafe Puccini's assets and affairs, and who received confidential information from appellants regarding the 'judicial rape of Puccini', could he thereafter be commandeered and embraced by some of the members of the judiciary to represent them for their transgressions upon Puccini, the judicial trust?

A. Impliedly, Mr. Justice Saxe, saw nothing improper.

11Q. Since an accounting has not been filed, final or interim, since Puccini was involuntarily dissolved on June 4, 1980, should have Mr. Justice Saxe directed Lee Feltman, Esq., the court appointed receiver, to file same, as appellant demanded, particularly where the documentary evidence reveals a massive larceny of judicially entrusted assets?

A. Mr. Justice Saxe responded in the negative.

12Q. Should have Mr. Justice Saxe directed Lee Feltman, Esq., the court appointed receiver to collect twice the amount unlawfully taken from Puccini, in accordance with statutory mandate?

A. Mr. Justice Saxe responded in the negative.

13Q. Should have Mr. Justice Saxe disinfected the 'temple of justice' in the Puccini matter, by orders of removal and disqualification, as demanded by appellants?

A. Mr. Justice Saxe rewarded these judicial scoundrels by granting them everything they desired!

14Q. Are draconian costs unconstitutional as violating free speech and access to the courts, where, as here, judicial improprieties and corruption are asserted, shown, and not even controverted?

A. Impliedly, Mr. Justice Saxe, asserted them to be appropriate."

POINT V

APPELLANT WAS ENTITLED TO NOTICE THAT PENAL CONSEQUENCES
COULD RESULT FROM THE VIOLATION OF THE ORDER OF
MR. JUSTICE GAMMERMAN.

1a. Everyone, including the most meticulous law-abiding citizen, must constantly choose between conflicting and irreconcilable laws, rules, regulations, and orders, spiritual, moral, and secular. Such legitimate evaluation requires knowledge of the consequences, not only to one self, but to others!

b. Where, as here, incarceration may be the result, constitutionally notice must be given beforehand of the possibility of such consequences in the order itself (People v. Parker, 57 N.Y.2d 136, 454 N.Y.S.2d 967; Vail v. Quinlan, 406 F. Supp. 951; Judiciary Law §756).

c. Thus, for example, to report misconduct to the Grievance Committee, is professionally obligatory (Disciplinary Rule 1-103), nevertheless the nisi prius Order of Mr. Justice Ira Gammerman order, read "Judge Saxe style", could result in criminal sanctions!

2a. At bar, not only did prior orders not give indications that incarceration was the result of violations, but prior decisions clearly rejected the assertion by the respondents that it was even a threshold defense!

b. The action commenced by appellant followed immediately after Orders rendered by Mr. Justice Kenneth Shorter, that appellants' legal actions, and their right to access to the courts (Bounds v. Smith, 430 U.S. 817), could not be prevented by such orders or directions, only to be followed by the Order of Mr. Justice Saxe incarcerating appellant for commencing such action.

Instructively and openly because appellant will not agree to conceal the official and judicial misconduct herein, new contempt proceedings have been instituted, contending, inter alia, that the Order of Mr. Justice Gammerman, a nisi prius jurist, prohibits not only access to the Grievance Committee, but also appellate review, without his express consent (cf. Eskridge v. Washington, 357 U.S. 214)! Once again there is no indication that any trial will be granted before sentence and incarceration!

3. Without conceding that Mr. Justice Gammerman's Order was violated, legitimate disobedience is a recognized concept to establish "a case or controversy" or a "judicial issue", which may not be prevented by fear of draconian consequences (Cotting v. Goddard, 183 U.S. 79, 100-102).

POINT VI

CPLR §5222[b] IS PARTIALLY UNCONSTITUTIONAL

1. CPLR §5222[b] insofar as it permits restraint "equal to twice the amount due", constitutes an unconstitutional post-judgment restraint for a clearly excessive amount (cf. Warren v. Delaney, 98 A.D.2d 799, 469 N.Y.S.2d 457 [2d Dept.]).

2a. When attorneys and/or creditors employ such statutory power to restrain four and six times the amount of the judgment by serving multiple restraining notices, and, as here, in addition thereto, thereafter serving a subpoena on the attorney to examine him on the pre-text of discovering assets to satisfy the judgment, it is clearly actionable (Lugar v. Edmondson, 457 U.S. 922).

b. Where construction of the Constitution of the United States permits, as here, federal claims to be brought in the state courts (Brody v. Leamy, 90 Misc.2d 1, 20, 393 N.Y.S.2d 243, 257), the supremacy clause of the United States Constitution prohibits the state courts from criminally convicting and incarcerating the attorney for bringing such action.

3a. There is nothing in CPLR 3211(a) which permits a dismissal of a meritorious action at the stage where only a summons and notice exist.

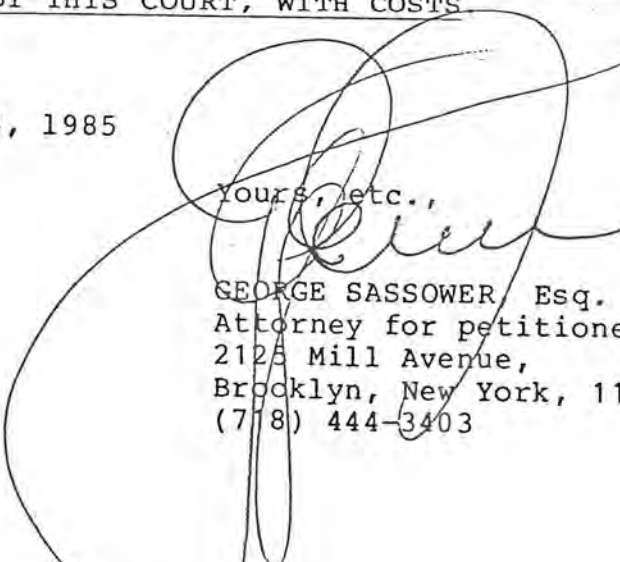
b. Significantly, a portion of such action was for malicious prosecution, resulting from the exoneration of plaintiff from a criminal contempt proceeding.

CONCLUSION

A SUMMARY REVERSAL OF THE ORDER APPEALED FROM SHOULD BE ENTERED BY THIS COURT, WITH COSTS.

Dated: September 24, 1985

Yours, etc.,


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

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

-----x
HYMAN RAFFE,

Plaintiff-Appellant,
[GEORGE SASSOWER, Esq.,
Appellant,]

Index No.
8749-1985

-against-
FELTMAN, KARESH & MAJOR,
Defendant-Respondent.
-----x

S I R S:

PLEASE TAKE NOTICE, that
plaintiff-appellants, HYMAN RAFFE and GEORGE SASSOWER,
Esq., above-named hereby appeal to the Court of Appeals
from an Order of the Appellate Division of the Supreme
Court, First Judicial Department, dated and entered on
September 17, 1985, and from each and every part thereof
including the whole.

Dated: September 20, 1985

Respectfully yours,

GEORGE SASSOWER, Esq.
Attorney for plaintiff-
appellants
2125 Mill Avenue,
Brooklyn, New York, 11234
(718) 444-3403

To: Feltman, Karesh & Major, Esqs.

Exhibit "A"

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 September 17, 1985

Present—Hon. Theodore R. Kupferman, Justice Presiding
Joseph P. Sullivan
David Ross
Arnold L. Fein
Ernst H. Rosenberger, Justices.

-----X
Hyman Raffae,

Plaintiff-Appellant, :

George Sassower, Esq.,

Appellant, :

-against- :

24070

Feltman, Karesh & Major, :

Defendant-Respondent.
-----X

An appeal having been taken to this Court by the above-named appellants from an order of the Supreme Court, New York County (David Saxe, J.), entered on July 1, 1985,

And said appeal having been argued by George Sassower of counsel for appellants, and by Donald F. Schneider of counsel for respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be -----
and the same hereby is affirmed, without costs and without disbursements.

ENTER:

HAROLD J. REYNOLDS
Clerk.

Exhibit "B"

A-3
ORDER APPEALED FROM

[A3-A71]

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, 60 Centre Street, New York, New York, on the 26 day of June, 1985.

P R E S E N T : DAVID B SOX

Hon. ~~ALVIN K. TRIVETT~~

Justice.

HYMAN RAFFE,

Plaintiff,

-against-

FELTMAN, KARESH & MAJOR,

Defendant.

INDEX NO. 8749/85

ORDER

Defendant Feltman, Karesh & Major, having made a motion for an order, inter alia, (i) permanently staying and enjoining the prosecution of this action in accordance with an Order of permanent injunction of the Honorable Ira Gammerman dated January 23, 1985, or alternatively, (ii) dismissing this action pursuant to CPLR §3211(a)(1), (3) and (5), as barred by the said Order, and (iii) punishing attorneys George Sassower and Sam Polur as and for a criminal contempt of court on the grounds that in commencing and serving this action, they have

Exhibit "C"

violated the said Order, and plaintiff Hyman Raffe having made a cross-motion for an order declaring unconstitutional and void CPLR §5222, declaring null and void defendant's restraint against bank accounts at Bank Leumi and National Bank of North America insofar as the restraint exceeds the sum of \$5,575.00, and declaring null and void a subpoena duces tecum dated March 21, 1985 and all other judgment enforcement proceedings by defendant.

Upon reading and filing defendant's Notice of Motion, dated April 3, 1985, the affidavit of Donald F. Schneider, sworn to on April 2, 1985, in support of the motion; the Notice of Cross-Motion of Hyman Raffe, dated April 13, 1985, the affirmation of George Sassower, dated April 13, 1985, and the exhibit annexed thereto, the affidavit of George Sassower, sworn to April 22, 1985, and the exhibit annexed thereto, the affirmation of George Sassower, dated May 1, 1985, and the exhibits annexed thereto, all in support of plaintiff's cross-motion and in opposition to the motion; the affirmation of Donald F. Schneider, Esq., dated April 19, 1985, in opposition to the cross-motion and in further support of the motion, and the exhibit annexed thereto; and the motion and cross-motion having regularly come on to be heard; and due deliberation having been had thereon; and the Court (Honorable David B. Saxe) having issued a written decision dated May 9, 1985;

And it appearing that the commencement of this action by attorney George Sassower, in direct violation of the permanent injunction Order of the Honorable Ira Gammerman dated January 23, 1985, was done wilfully and with full knowledge of the Order disobeyed, and that such conduct was intended to and has defeated, impeded, impaired and prejudiced the rights of defendant Feltman, Karesh & Major;

And it appearing that in connection with the dissolution of Puccini Clothes, Ltd., attorney George Sassower and plaintiff Hyman Raffe have commenced, filed or made the motions, lawsuits, proceedings, and appeals set forth in the schedules annexed hereto as Exhibits "A", "B", "C" and "D" respectively,

NOW, upon motion of Feltman, Karesh & Major, defendant pro se, it is hereby

ORDERED, that defendant's motion for an order dismissing this action pursuant to CPLR §3211(a)(1), (3) and (5) is granted in all respects, and this action is dismissed; and it is further

ORDERED, that defendant's motion for an order punishing George Sassower for a criminal contempt of the Order of the Honorable Ira Gammerman, dated January 23, 1985, which

permanently enjoined and restrained George Sassower from commencing and filing this action, is granted in all respects; and it is further

2 ORDERED, that George Sassower shall be imprisoned for a period of ^{ten} ~~thirty~~ (30) days in the jail of the county of this Court as and for his criminal contempt of court; and it is further

ORDERED, that George Sassower shall pay to defendant Feltman, Karesh & Major, at 55 East 52nd Street, New York, New York 10055, a fine in the sum of \$250.00 within ten (10) days after service upon George Sassower of a certified copy of this order with notice of entry thereof, for his criminal contempt of court; and it is further

ORDERED, that ~~THE SHERIFF OF ANY COUNTY IN THE STATE OF NEW YORK WHEREIN GEORGE SASSOWER MAY BE APPREHENDED IS DIRECTED TO TAKE HIM INTO CUSTODY AND DETAIN HIM IN THE CIVIL JAIL~~ ^{his} ~~UNTIL THE COMPLETION OF HIS TERM OF THIRTY DAYS OR UNTIL HE SHALL BE OTHERWISE DISCHARGED ACCORDING TO LAW; AND IT IS~~ ^{OTHER APPROPRIATE}

FURTHER ORDERED, that defendant's motion to punish Sam Polur for a criminal contempt of court is denied; and it is further

ORDERED, that plaintiff's cross-motion is denied in all respects; and it is further

E N T E R :

JUL 1 - 1985

COUNTY CLERK'S OFFICE
NEW YORK

David B. Starr

003000:NY

STATE OF NEW YORK,
COUNTY OF NEW YORK, SS.
LICHAMIAN GOODMAN,
COUNTY CLERK AND CLERK
OF THE SUPREME COURT,
NEW YORK COUNTY,
DO HEREBY CERTIFY ON

JUL -1 1985

THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL FILED IN MY OFFICE ON

7-1-85

AND THAT THE SALES A
CONNECT TRANSCRIPT
THERETO AND OF THE
WHOLE OF SUCH ORIGINAL
IN WITNESS WHEREOF,
I HAVE HEREUNTO SET MY
HAND AND AFFIXED MY
OFFICIAL SEAL.

ALBANY DISTRICT COURT
COUNTY CLERK AND CLERK OF THE
SUPREME COURT, NEW YORK COUNTY
FIDELITY & SECURITY TRUST
NEW YORK TO NEW YORK
COUNTY NEW YORK

FEE PAID

OPINION - SAXE, J.
[A59-A62]

SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I

CITY CLK FROM JUSTICE JP/4
10

MAY 14 1985

HYMAN RAFFE,

Plaintiff,

Index No. 8749785

-against-

22 of 5/2/85

FELTMAN, KARESH & MAJOR,

MEMO

Defendant.

DAVID B. SAXE, J.:

By order dated January 23, 1985, Justice Ira Gammerman permanently enjoined and restrained attorney, George Sassower, Esq., ("Sassower") and Hyman Raffe ("Raffe") "together or in connection with any person or entity ... and all others acting in concert or cooperation with or acting at the behest, direction or instigation of either or both Hyman Raffe or George Sassower", from filing or serving any further lawsuits against the law firm of Feltman, Karesh & Major ("FK&M"), arising out of or relating to, inter alia, the judicial dissolution of Puccini, the receivership or the representation of the receiver by FK&M. Thereafter, on April 1, 1985, in violation of this order, one Samuel Polur, served a summons with notice upon an associate of FK&M, naming FK&M as a party defendant to a \$500,000 damage suit. The summons names Mr. Raffe as the plaintiff and lists Mr. Sassower as attorney of record for Mr. Raffe.

Exhibit "D"

This action is in direct violation of the Permanent Injunction Order of Mr. Justice Gammernan. Consequently, the aforementioned action is dismissed with prejudice and costs.

The firm of Feltman, Karesh & Major (FK&M) has also moved for an order of Criminal Contempt against Messers. Sassower and Polur.

The litigious Mr. Sassower through his conduct attempted to defeat, impede, impair and prejudice the rights of FK&M.

Section 750 of the Judiciary Law empowers a court of record to punish for Criminal Contempt. That section, in pertinent part provides:

"A court of record has power to punish for a Criminal Contempt, a person guilty of any of the following acts, and no others:.. Wilful disobedience to its lawful mandate". (N.Y. Jud. Law § 750).

A Criminal Contempt is established when there is a clear and definitive order of the court, the contemnor knows of the order and he wilfully disobeys it. (Puro v Puro. 33 N.Y.2d 805).

In order to find a party's conduct to have been wilful, it must be shown that he has actual knowledge of the order which was disobeyed. (21 N.Y. Jr. 2d., Contempt. § 7).

The undisputed facts here demonstrate that the violation of the order of this court occurred with the actual knowledge of the order by Messer .. Sassower.

Indeed, the violation of Mr. Justice Gammerman's order is not an isolated incident. He has violated the Temporary Restraining Order and the decision of Mr. Justice Gammerman. These violations are set out in Mr. Justice Gammerman's order.

The repeated violations of this order and others have enabled Mr. Sassower to carry out an extensive campaign of harassment against the receiver and his attorneys, FK&M; the record is replete with lawsuits, Article 78 proceedings and motions and appeals all arising out of the Puccini Clothes Dissolution. Mr. Sassower has been held in civil contempt by Mr. Justice Evans. He has, it is alleged, ignored the contempt order by refusing to pay the fine assessed. Further, it is noted that

Mr. Sassower has a documented history of flouting court orders (see, e.g., Kelly v Sassower, 78 A.D.2d 502; Sassower v Signorelli, 99 A.D.2d 358).

The entry of court order enjoining such conduct, even followed by a civil contempt fine has not deterred Mr. Sassower, nor have awarded attorneys' fees (See This Court's decision in Index # 1816/80, Barr v Puccini, February 14, 1984).

Only the imposition of Criminal Contempt remains as a deterrent to this rendering onslaught of legal outrage. In bringing this action then, Messrs. Sassower has wilfully violated the order of Mr. Justice Gammerman of 1/23/85 and consequently Criminal Contempt sanctions are fully warranted and shall be ordered. Defendant's motion is therefore granted as against Sassower only; as against Polar contempt is denied based on movant's failure to prove "wilfulness" beyond a reasonable doubt.

The plaintiff's cross-motion is denied in all respects.

Settle an order in conformity with the foregoing. The proposed order should contain, among other things, a listing of every lawsuit, proceeding (Article 78 or otherwise) motion, order and/or appeal in connection with Messers. Sassower, Rafferty and their involvement, with the Puccini Clothes Dissolution. The list shall contain a description of the outcome of each such lawsuit or proceeding, motion or appeal and which Justice rendered a decision or order.

Said order shall also provide for service of a copy of the order with notice of entry thereon upon the Appellate Division, First and Second Departments.

Dated: May 9, 1985

J. S. C.

David B. Saxe