

COURT OF APPEALS · STATE OF NEW YORK

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HYMAN RAFFE,

Plaintiff-Appellant,
GEORGE SASSOWER, Esq. and SAM POLUR, Esq.
Appellants,
XAVIER C. RICCOBONO, DONALD DIAMOND,
FELTMAN, KARESH & MAJOR, Esqs. and
KREINDLER & RELKIN, P.C.
Defendants-Respondents.

-----x
HYMAN RAFFE,

Plaintiff-Appellant,
GEORGE SASSOWER, Esq.
Appellant,
-against-
KREINDLER & RELKIN, P.C., Hon. WALTER
M. SCHACKMAN, "JOHN DOE", and "JOHN ROE",
names fictitious, persons intended to be
those who communicated with the Court,
ex parte,
Defendants-Respondents.

-----x
HYMAN RAFFE,

Plaintiff-Appellant,
GEORGE SASSOWER, Esq.,
Appellant,
-against-
DONALD B. RELKIN, Esq., MICHAEL J.
GERSTEIN, Esq., KREINDLER & RELKIN, P.C.,
CITIBANK, N.A. and JEROME H. BARR, Esq.,
individually and as Executors of the
Will of Milton Kaufman,
Defendants-Respondents.

-----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. Robert Abrams, Esq.
2 World Trade Center,
New York, New York, 10047
(212) 488-5896

Feltman, Karesh & Major, Esqs.
55 East 52nd Street,
New York, New York, 10055
(212) 371-8630

Kreindler & Relkin, P.C.
500 Fifth Avenue,
New York, New York, 10110
(212) 719-1600

b. 1. The Notice of Appeal is annexed hereto
(Exhibit "A").

2. The Order appealed from is annexed hereto
(Exhibit "B").

3. None.

4. The opinion of the Appellate Division
(Exhibit "C").

5. None.

6. None.

STATEMENT OF ESSENTIAL FACTS

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

* * *

1a. Appellants, George Sassower, Esq. and Sam Polur, Esq., attorneys, and Hyman Raffé, 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. The Order employed as a pre-text for the above convictions was one of Hon. Ira Gammerman, dated January 23, 1985, entered on January 24, 1985.

The Order of January 23, 1985, should be distinguished from His Honor's purported sister Order, dated the same date, which although purportedly notice for settlement at Special Term Part I, was never seen nor examined by the clerks therein or entered in any of its books or records before being signed by Mr. Justice Gammerman. After the signing of same, it was never returned to Special Term Part I, as shown by the records therein; never entered by the County Clerk; but unstamped and unentered was located in the file several weeks later!

This Order of Mr. Justice Gammernan, is sometimes referred to by appellants' as the "sewer odyssey", while the order which was entered on January 24, 1985, which enjoined appellants from, inter alia, communicating with the Grievance Committee or other professional disciplinary body, is sometimes referred to as the "space odyssey"!

It is the "space odyssey" order (which also had a suspect judicial route, as the submitted papers reveal), which is the basis of the instant contempt proceeding.

c. Senior Assistant Attorney General, David S. Cook, Esq., has conceded that this Order has "no legal effect upon him, his office, or his judicial clients". A similar concession has been made, sub silentio, by another firm of attorneys.

Appellants, while never admitting disobedience to said Order, have nevertheless claimed that personal jurisdiction was never obtained over appellant, Hyman Raffe ["Raffe"]; and Sam Polur, Esq. ["Polur"] was never a party to the proceeding.

d. By a separate and independent Article 78 proceeding, based on double jeopardy, or more correctly "quadruple jeopardy", and invidious and selective discriminatory prosecution, a special proceeding was instituted against Mr. Justice Alvin F. Klein and Mr. Justice David B. Saxe, presently sub judice at the Appellate Division.

Pending in this Court, is the appeal of Raffae and George Sassower, Esq. ["Sassower"], based upon their double jeopardy claims by reason of their exoneration by Hon. Martin Evans, and their invidious discrimination claims (Raffae v. Justices).

e. Each appellant, by Order dated and entered the same day as that of Mr. Justice David B. Saxe, were convicted and sentenced to be incarcerated for 30 days.

f. Instructively, while Mr. Justice David B. Saxe exonerated Polur, where he admitted serving the summons, simultaneously, Mr. Justice Alvin F. Klein convicted him where he never made such admission.

Significantly, decisive on the issue that the entire contempt proceeding was a sham, was the failure of Hon. Alvin F. Klein to release Polur from incarceration, after it was revealed in open, without contradiction, that the uncorroborated accusatory affidavit by Donald F. Schneider, Esq. ["Schneider"], was perjurious!

The accusation that the Schneider affidavit was perjurious, with a detailed recital of the surrounding events such purported service by Polur, was not denied by either Schneider nor his colleague, Michael J. Gerstein, Esq., who witnessed the event.

Nor has such accusation of perjury been denied by Senior Assistant Attorney, David S. Cook, Esq., who also witnessed the event!

Nevertheless, Mr. Justice Klein failed to release Mr. Polur from his incarceration (United States v. Agurs, 427 U.S. 97; Brady v. Maryland, 373 U.S. 83).

g. The disclosure that such Schneider affidavit was perjurious was made the day after the Appellate Division, decided to discard the 800 year, single issue, involved in the traditional writ of habeas corpus ad subjiciendum, by addressing itself to the asserted evidence, rather than the legality of the detention. (People ex rel. Sassower [Polur] v. Cunningham, [Jurisdictional Statement filed]). Most disturbing was that court's reference to the failure to "deny"!

2a. Thus, it takes a remarkably vivid legal imagination to conceive a situation wherein Mr. Polur is exonerated by one judge, by a prior decision, where he admits making service, and thereafter convicted by Mr. Justice Klein, where he makes no such admission.

b. Mr. Justice Klein convicted Raffae, without a trial, although he had been previously exonerated by Mr. Justice Martin Evans, twice by the Appellate Division, in original proceedings, and by other jurists.

c. In all proceedings, the assertion of invidious and discriminatory prosecution, is uncontroverted and unchallenged!

Nevertheless, the issue and a hearing on same is blithely ignored!

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. Appellants 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, appellants, are 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 the judicial defendants after Sassower had given him personally his 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 the judicial defendants herein.

POINT IV

APPELLANTS WERE 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 for the attorney appellants (Disciplinary Rule 1-103), nevertheless the nisi prius Order of Mr. Justice Ira Gammernan order, read "Judge Klein 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 Sassower 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 Orders of Mr. Justice Saxe and Klein incarcerating appellants for commencing such action.

Instructively and openly because Sassower will not agree to conceal the official and judicial misconduct herein, new contempt proceedings have been instituted against him, 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 V

DISMISSAL OF THESE ACTIONS WERE CLEARLY UNCONSTITUTIONAL

1a. These federally based actions could have easily been brought in the federal forum where their validity would have been clearly recognized (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.

2. 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.

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. and SAM POLUR, Esq.
Appellants,

Index No.
9522-1985

XAVIER C. RICCOBONO, DONALD DIAMOND,
FELTMAN, KARESH & MAJOR, Esqs. and
KREINDLER & RELKIN, P.C.

Defendants-Respondents.
-----x

HYMAN RAFFE,

Plaintiff-Appellant,
GEORGE SASSOWER, Esq.
Appellant,
-against-

KREINDLER & RELKIN, P.C., Hon. WALTER
M. SCHACKMAN, "JOHN DOE", and "JOHN ROE",
names fictitious, persons intended to be
those who communicated with the Court,
ex parte,

Defendants-Respondents.
-----x

HYMAN RAFFE,

Plaintiff-Appellant,
GEORGE SASSOWER, Esq.,
Appellant,
-against-

DONALD B. RELKIN, Esq., MICHAEL J.
GERSTEIN, Esq., KREINDLER & RELKIN, P.C.,
CITIBANK, N.A. and JEROME H. BARR, Esq.,
individually and as Executors of the
Will of Milton Kaufman,

Defendants-Respondents.
-----x

S I R S:

PLEASE TAKE NOTICE, that
plaintiffs-appellants, HYMAN RAFFE, GEORGE SASSOWER,
Esq., and SAM POLUR, Esq.. above-named hereby appeal to
the Court of Appeals from an Order of the Appellate

Exhibit "A"

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: Kreindler & Relkin, P.C.
Feltman, Karesh & Major, Esqs.

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 Raffé,
Plaintiff-Appellant,
George Sassower, Esq. and Sam Polur, Esq.,
Appellants,
Xavier C. Riccobono, Donald Diamond, Feltman,
Karesh & Major, Esqs. and Kreindler &
Relkin, P.C.,
Defendants-Respondents.

Hyman Raffé,
Plaintiff-Appellant,
George Sassower, Esq., Appellant,
-against- : 24069
Kreindler & Relkin, P.C., Hon. Walter M.
Schackman, "John Doe", and "John Roe",
names fictitious, persons intended to be
those who communicated with the Court,
ex parte,
Defendants-Respondents.

Hyman Raffé,
Plaintiff-Appellant,
George Sassower, Esq., Appellant,
-against- :
Donald B. Relkin, Esq., Michael J. Gerstein, Esq., :
Kreindler & Relkin, P.C., Citibank, N.A. and
Jerome H. Barr, Esq., individually and as
Executors of the Will of Milton Kaufman, :
Defendants-Respondents.

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

And said appeal having been argued by George Sassower of counsel for

APPEAL NO. 24069 CONTD.

appellants, by Donald F. Schneider of counsel for respondent Feltman, Karesh & Major, Esqs., and by Michael J. Gerstein of counsel for respondents Citibank, Barr, Kreindler & Relkin, Donald Relkin and Michael J. Gerstein; 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.

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, at the Courthouse,
60 Centre Street, New York
on the 26th day of June 1985

P R E S E N T:

Hon. Alvin F. Klein,

Justice.

-----X
HYMAN RAFFE,

Plaintiff,

-against-

XAVIER C. RICCOBONO, DONALD DIAMOND,
FELTMAN, KARESH & MAJOR, ESQ. and
KREINDLER & RELKIN, P.C.,

Defendant.
-----X

HYMAN RAFFE,

Plaintiff,

-against-

KREINDLER & RELKIN, P.C., Hon. WALTER
M. SCHACKMAN, "JOHN DOE", and "JOHN ROE",
names fictitious, persons intended to be
those who communicated with the Court,
ex parte,

Defendants.
-----X

HYMAN RAFFE,

Plaintiff,

-against-

DONALD B. RELKIN, ESQ., MICHAEL J.
GERSTEIN, ESQ., KREINDLER & RELKIN,
P.C., CITIBANK, N.A., and JEROME H.
BARR, ESQ., individually and as Executors
of the Will of Milton Kaufman

Defendant.
-----X

CITY CLK FROM JUSTICE
TO RECEIVED BOOK
DISPN

JUL 1 1985

LIMITED SPECIAL TERM
PART I
ACTION No. 1) LAW
JOURNAL

Index No. 9522/85

ORDER

(Action No. 2)

(Action No. 3)

Kreindler & Relkin, P.C., defendant in Actions No. 1 and Action No. 2; and Donald B. Relkin, Michael J. Gerstein, Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr individually and as Executors of the Will of Milton Kaufman defendants in Action No. 3 having moved for: a) An order pursuant to CPLR 3211(a)1, 3211(a)3 and 3211(a)7 dismissing this action or alternatively permanently staying the action as being brought in violation of the Order of Justice Gammerman dated January 23, 1985; b) An order holding George Sassower and Hyman Raffe in three counts of criminal contempt of Court on the grounds that in commencing each of these three actions they have flagrantly and deliberately violated the injunction issued by Justice Gammerman, which injunction permanently enjoined and restrained George Sassower and Hyman Raffe and anyone acting in concert or cooperation with either of them from filing or serving any further lawsuits against any of the Movants arising out of the enforcement of Hyman Raffe's guarantees; c) awarding to the Movants damages including reasonable attorneys' fees which resulted from the violation of Justice Gammerman's injunction by Hyman Raffe and George Sassower, pursuant to Judiciary Law §773 and the prior order of this Court which held that "future motions by Messrs. Sassower and Raffe should be examined in light of the well established exception to the American Rule that attorneys' fees are recoverable in response to vexatious suits and litigation commenced in bad faith"; and

1, having moved for an order:

(i) permanently staying and enjoining the prosecution of this action against defendant Feltman, Karesh & Major in accordance with this Court's permanent injunction order of January 23, 1985 (Gammerman, J.) (the "Permanent Injunction Order"); or alternatively,

(ii) dismissing this action pursuant to CPLR 3211(1) 1,3 and 5 as barred by the Permanent Injunction Order; and

(iii) punishing attorney George Sassower, plaintiff Hyman Raffé and Samuel Polur, who served the Summons with full knowledge of the Permanent Injunction Order, as and for a criminal contempt of court on the grounds that in serving the Summons and in commencing this action they have flagrantly and deliberately violated the Permanent Injunction Order, which Order, inter alia, permanently enjoined and restrained George Sassower and Hyman Raffé and anyone acting in concert or cooperation with either or both of them from filing or serving any further lawsuits against Feltman, Karesh & Major, arising out of or relating to, inter alia, the judicial dissolution, the receivership of Puccini Clothes, Ltd. or the representation of the Receiver by Feltman, Karesh & Major; and

(iv) awarding to Feltman, Karesh & Major damages, including reasonable attorney's fees, which resulted from the violation of the aforesaid Order by George Sassower, Hyman Raffé and Samuel Polur, pursuant to Judiciary Law §773 and the prior Order of this Court which held that "future motions by Messrs. Sassower and Raffé should be examined in light of the well-established exception to the American rule that attorneys' fees are recoverable in response to vexatious suits and litigations commenced in bad faith"; and

(v) for such other, further and/or different relief as to this Court may seem just and proper:

Now, upon reading and filing the Notice of Motion of Kreindler & Relkin, P.C., dated April 30, 1985, the affidavit of Michael J. Gerstein, duly sworn to on April 30, 1985, and the exhibits annexed thereto; the affidavit of personal service of the Notice of Motion on Hyman Raffé of Roger Dougherty, sworn to on May 13, 1985; the affidavit of personal service of the Notice of Motion on George Sassower of Roger Dubin sworn to on May 6, 1985, all in support of Kreindler & Relkin P.C.'s motion, and upon the Notice of Motion of Feltman, Karesh & Major dated April 11, 1985, the affidavit of Donald F. Schneider, duly sworn to on April 11, 1985, and the exhibits annexed thereto; the affidavit of service of the Notice of Motion on George Sassower of

Donald F. Schneider sworn to on April 19, 1985; the affidavit of service of the Notice of Motion on Samuel Polur of Donald F. Schneider, sworn to on April 19, 1985; the Supplemental Affirmation of Donald F. Schneider, dated May 6, 1985 all in support of Feltman, Karesh & Major's motion, and said motion having regularly come on to be heard for oral argument before the Honorable Alvin F. Klein at Special Term Part I of this Court on May 29, 1985; and after hearing Kreindler & Relkin, P.C. by Michael J. Gerstein, Esq., and Feltman, Karesh & Major by Donald F. Schneider, Esq., in support of the motions, and Sam Polur, Esq., on behalf of Hyman Raffe, George Sassower and Sam Polur in opposition thereto;

And due deliberation having been had thereon; and Hyman Raffe, George Sassower and Sam Polur, having commenced these actions and served the summonses in wilful and deliberate violation of an order of Justice Gammerman dated January 23, 1985, which Order permanently enjoined commencement of actions such as these three, which were commenced with full knowledge of the said Order, and the conduct of Hyman Raffe, George Sassower and Sam Polur having been calculated to and having defeated, impaired, impeded and prejudiced the rights of defendants Kreindler & Relkin, P.C. and Feltman, Karesh & Major in Action No. 1; Kreindler & Relkin, P.C., in Action No. 2, and Donald B. Relkin, Esq., Michael J. Gerstein, Esq., Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr, Esq., individually and as Executors of the Will of Milton Kaufman in Action No. 3; and this Court having rendered a decision dated June 6, 1985 ~~granting the motions~~;

Now, on motion of Kreindler & Relkin, P.C. and Feltman, Karesh & Major, it is

ORDERED, that motions Nos. 21 & 178 on the calendar of May 29, 1985 are consolidated for disposition; and it is further *ORDERED THAT THE MOTIONS ARE GRANTED AND IT IS FURTHER*

ORDERED, that so much of defendants' motions as seek to dismiss these actions pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR 3211(a)5 and CPLR 3211(a)7 are granted; and it further

ORDERED, that Action No. 1 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR 3211(a)5, and CPLR 3211(a)7 as to defendants Feltman, Karesh & Major Esqs., and Kreindler & Relkin, P.C.; and it is further

ORDERED, that Action No. 2 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR 3211(a)5, and CPLR 3211(a)7 as to defendant Kreindler & Relkin, P.C.; and it is further

ORDERED, that Action No. 3 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR 3211(a)5, and CPLR 3211(a)7 as to all defendants therein; and is further

ORDERED, that the motions of Kreindler & Relkin, P.C. to punish Hyman Raffo and George Sassower for criminal contempt, and the motion of Feltman, Karesh & Major to

punish George Sassower and Samuel Polur for a criminal contempt, are granted in all respects; and it is further

ORDERED AND ADJUDGED, that Hyman Raffe, George Sassower and Samuel Polur are guilty of criminal contempts of court for having wilfully and deliberately violated the Order of Justice Gammerman, dated January 23, 1985, which Order permanently enjoined commencement of the within actions, and it is further

ORDERED, that pursuant to the Judiciary Law of the State of New York, by reason of such criminal contempt of court, Hyman Raffe, George Sassower, and Samuel Polur shall each be imprisoned for a period of thirty (30) days in the jail of the county of this Court, and George Sassower shall pay a fine of \$250.00 to each of Feltman, Karesh & Major, 55 East 52nd Street, New York, New York, Kreindler & Relkin, P.C., Donald B. Relkin, Esq., Michael J. Gerstein, Esq., 500 Fifth Avenue, New York, New York and Citibank N.A. and Jerome H. Barr, individually and as Executors of the Will of Milton Kaufman, One Citicorp Center, New York, New York, Hyman Raffe shall pay a fine of \$250.00 to each of Feltman, Karesh & Major, 55 East 52nd Street, New York, New York, Kreindler & Relkin, P.C., Donald B. Relkin, Esq., Michael J. Gerstein, Esq., 500 Fifth Avenue, New York, New York and Citibank N.A. and Jerome H. Barr, individually and as Executors of the Will of Milton Kaufman, One Citicorp Center, New York, New York and Sam Polur shall pay a fine of \$250.00 to

Feltman, Karesh & Major, 55 East 52nd Street, New York, New York within ten (10) days after personal service of a certified

copy of this Order upon them, and it is further

ORDERED THAT THE SHERIFF OF ANY COUNTY IN THE STATE OF NEW YORK WHEREIN HYMAN RAFFE, GEORGE SASSOWER AND SAMUEL POLUR, ~~OR ANY OF THEM MAY BE APPREHENDED~~ IS DIRECTED TO TAKE HIM ~~OR THEM INTO HIS CUSTODY AND DETAIN HIM OR THEM IN THE CIVIL JAIL OR OTHER APPROPRIATE FACILITY UNTIL THE COMPLETION OF THEIR TERM OF THIRTY DAYS OR UNTIL THEY SHALL BE OTHERWISE DISCHARGED, ACCORDING TO LAW, AND IT IS FURTHER~~ ORDERED, that those branches of the motions seeking

recovery of damages, including attorneys' fees incurred as the result of defending these actions, are granted to the extent that the ~~MATTER REVALUATING AND APPRAISING~~ reasonable value of such damages and attorneys' fees is hereby referred to Trial Term, Part 10 for assignment to hear and report with recommendations and that pending receipt of the report, final determination of those portions of the motions is held in abeyance. COUNSEL ARE DIRECTED TO FORTHWITH SEND A CONFIRMED COPY OF THIS ORDER OF TAKING CLERKS OF THE OFFICE OF THE REEFERS FOR THE PURPOSE OF ARRANGING A CALENDAR DATE
ENTER:

FILED

JUL 1 - 1985

COUNTY CLERK'S OFFICE
NEW YORK

Q. F. R.
J.S.C.

SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I

X

HYMAN RAFFE,

Plaintiff,

- against -

XAVIER C. RICCOBONO, et al.,

Defendants.

Index No. 9522/85

Cal. No. 21

Cal. Date 5/29/85

RECEIVED
JULY 7 1985
CLERK OF THE COURT
JULY 7 1985

KLEIN, ALVIN F., J.:

Motions numbered 21 and 178 on the calendar of May 29, 1985 are consolidated for disposition.

Motion no. 178 is by various defendants in three separate actions seeking an order pursuant to CPLR 3211 dismissing these actions or, in the alternative, permanently staying them on the grounds that they were commenced in violation of the permanent injunctive order of Justice Gammerman dated January 23, 1985; for an order pursuant to §§750(3) and 751 of the Judiciary Law punishing plaintiff Raffe and his attorney, George Sassower, for criminal contempt of court for deliberate violation of the said order dated January 23, 1985; and for an order pursuant to § 773 of the Judiciary Law awarding movants damages, including reasonable attorneys' fees, resulting from Raffe's and Sassower's violation of the January 23, 1985 order.

Motion no. 21 is by a defendant in another action seeking similar relief against Sassower and against Samuel Polur, the attorney who served the summons in that action with full knowledge of the January 23, 1985 order of Justice Gammerman.

Criminal contempt is established when there is a clear and definite court order, and the contemnor knows of the order and Exhibit "D"

willfully disobeys it (see § 750 Judiciary Law; State v. Congress of Racial Equality, 92 AD2d 815).

It is evident that the order of Justice Gammerman dated January 23, 1985 enjoined commencement of the within actions. It is also apparent that these actions were brought subsequent to the issuance of that order and that they were brought by and served by persons with knowledge of that order.

Upon a careful reading of all of the papers submitted herein, and after oral argument before this court on May 29, 1985, it is clear to this court that plaintiff Raffe and the attorneys Sassower and Polur have willfully and deliberately flouted the aforesaid order of Justice Gammerman. Their flagrant disregard of the order is an affront to the dignity of the court and warrants imposition of criminal contempt sanctions.

Accordingly, those parts of the motions seeking orders punishing Raffe, Sassower and Polur for criminal contempt are granted.

Those branches of the motions seeking recovery of damages including attorneys' fees incurred as a result of defending these actions are granted to the extent that the issue of the reasonable value of such damages and attorneys' fees is hereby referred to Trial Term Part 10 for assignment to hear and report with recommendations. Pending receipt of the report, final determination of these portions of the motions shall be held in abeyance. Counsel are hereby directed to file a copy of this order with the Office of the Referees, Room 308M, 60 Centre Street, for the purposes of obtaining a calendar date.

Inasmuch as commencement of these actions had been barred by the order of Justice Gammerman dated January 23, 1985, those

portions of the motions seeking orders dismissing these actions are granted with prejudice.

Settle order.

Dated: June 6th, 1985

Q 715

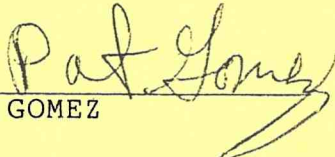
J.S.C.

STATE OF NEW YORK)
CITY OF NEW YORK)ss.:
COUNTY OF KINGS)

PAT GOMEZ, first being duly sworn, deposes,
and says:

I am over the age of 21, reside at 739 East
88th Street, Brooklyn, New York, 11236 and not a party
to this action.

That on the 24th day of September, 1985, I
served copies of the within Jurisdictional Statement by
depositing a copy of same in a Post Office Box in the
State of New York, addressed to Hon. Robert Abrams;
Kreindler & Relkin, P.C.; and Feltman, Karesh & Major,
Esqs., at their last known addresses.


PAT GOMEZ

Sworn to before me this
24th day of September, 1985



BARBARA PATESURE
Notary Public State of New York
No. 24-4760746
Qualified in Kings County
Commission Expires March 30, 1986