

COURT OF APPEALS : STATE OF NEW YORK

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In the Matter of the
Application of
GEORGE SASSOWER, individually and on
behalf of PUCCINI CLOTHES, LTD., a
helpless judicial ward,
and HYMAN RAFFE, a judicial hostage,
Petitioners-Appellants,
-against-
Hon. STANLEY HARWOOD, a Justice of the
Supreme Court of the State of New York,
County of Nassau; and Hon. LAWRENCE N.
MARTIN, JR.; and Hon. ALDO A. NASTASI,
Justices of the Supreme Court of the
State of New York, County of Westchester,
Respondents.
For an Order pursuant to Article 78 of
the CPLR
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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, Second Judicial Department, dated and entered on May 27, 1986, finally determining a special proceeding directly involving the construction of the Constitutions of the State of New York and of the United States (CPLR §5601[b][1]).
3. The notice of appeal was served on June 12, 1986.
4. The Order appealed from with notice of entry was never served.
5. Hon. ROBERT ABRAMS
Attorney for Respondents.
2 World Trade Center
New York, New York, 10047
(212) 488-5896
- Feltman, Karesh, Major and Farbman, Esqs.
Attorneys for "self-styled public prosecutors"
55 East 52nd Street,
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(212) 371-8630

- b. 1. The Notice of Appeal is annexed hereto (Exhibit "A").
2. The Order appealed from is annexed hereto (Exhibit "B").
3. There are no other orders brought up for review.
4. The opinion by the Appellate Division is annexed hereto (Exhibit "C").
5. The proceedings were commenced in the Appellate Division (CPLR 506[b][1]).

STATEMENT OF ESSENTIAL FACTS

1. Since "double jeopardy" constitutional values are involved, on a continuing basis, expeditious treatment is respectfully requested.

2a. Appellant exposed, by uncontrovertable documentary evidence, the massive larceny of judicial trust assets, perjury, and corruption by, inter alia, the law firms of KREINDLER & RELKIN, P.C. ["K&R"] and FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. ["FKM&F"].

b. The unintended result of such investigation was the implication of judicial and public officials in the aforementioned criminal conduct.

c. Thus, although an accounting must be filed every year, and the Attorney General must make application for such accounting after the expiration of eighteen (18) months (Business Corporation Law §1216), it is now more than six (6) years --

more than seventy-two (72) months -- since PUCCINI CLOTHES, LTD., was involuntarily dissolved, and still no accounting has been filed by the Receiver, LEE FELTMAN, Esq. ["Feltman"], the senior partner in FKM&F.

d. There is absolutely no way that Feltman or FKM&F can file an accounting, without clearly exposing the massive larceny of judicial trust assets, the perjury, and corruption that took place.

e. Consequently, the "self-styled public prosecutors" (see Polo Fashions v. Stock Buyers, 760 F.2d 696 [6th Cir.], amicus invited, U.S. , 106 S.Ct. 565, 88 L.Ed2d 550; U.S. ex rel. Vuitton v. Klayminc, 780 F2d 179 [2d Cir.]), who are indeed nothing more than "criminals with law degrees" commenced, substantially simultaneously, numerous non-summary contempt proceedings based on the same facts, the same evidence, and the same assertions.

f. Within a three month period of 1985-1986, there were eight (8) "real" [based on actual notices of motion or cross-motion] contempt proceedings, and one (1) "phantom" [based on non-existing papers, and without notice] contempt proceeding, to repeat -- based on the same facts, evidence, and assertions!

g. The first Order of the aforementioned contempt proceedings to be entered in the Office of the County Clerk was that of Mr. Justice LESTER EVENS, Acting Supreme Court Justice of New York County, dated January 15, 1986, and entered on January 27, 1986, which reads as follows:

"The motion to hold GEORGE SASSOWER in contempt is denied. With regard to charges of contempt related to Mr. Sassower's motion numbered 145 on the calendar of 12-30-85, that motion has been dismissed and contempt charges are now moot. Those charges relating to Mr. Sassower's purported conduct in matters other than motion #145 are insufficient to support a finding of contempt." [emphasis supplied]

h. The second Order of the aforementioned multiple contempt proceedings to be entered in the Office of the County Clerk, was that of Mr. Justice MARTIN EVANS, Justice of the Supreme Court, New York County, which reads as follows:

"[M]otion seeking to renew the motion for contempt against George Sassower, Esq., is denied. Movant has not set forth an adequate basis for altering this Court's prior Order."

An appeal pends, sub judice, from the original, as well as the aforementioned renewal Order of Mr. Justice MARTIN EVANS, at the Appellate Division, First Department.

i. When it became obvious that all the other contempt motions were all similarly "doomed", Mr. Justice IRA GAMMERMAN, based on a "phantom", "non-existing", "no-notice" contempt proceedings (cf. Judiciary Law §756), without trial, imposed sanctions upon the petitioner for non-summary contempt.

j. At bar, vindication is nothing but a curse, since vindication simply brings forth, in geometric fashion, new proceedings, based on the same facts, evidence, and assertions!

3a. The evidence of misconduct against Administrator XAVIER C. RICCOBONO, Mr. Justice IRA GAMMERMAN, and Referee DONALD DIAMOND, is very dramatic, and as repeated asserted, it has never been controverted by anyone at anytime.

b. Grave and serious charges have also been levelled against the Appellate Division, First Department, and justifiably so.

c. In respectful and crystal clear terms, both nisi prius and the Appellate Division have been told that appellant has neither the power nor authority to compound criminal conduct, and has no intention of doing so.

d. Administrator XAVIER C. RICCOBONO, Mr. Justice IRA GAMMERMAN, and Referee DONALD DIAMOND, as well as sever members of the Appellate Division, First Department are named defendants, respondents, and named Dennis v. Sparks (449 U.S. 24) co-conspirators, arising inter alia out of the conviction, sentencing, and incarceration, without a trial, for non-summary criminal contempt of the petitioner and SAM POLUR, Esq., so that "extortion" could be practiced against their client, HYMAN RAFFE.

4a. The sanctions imposed by Mr. Justice IRA GAMMERMAN based on his "phantom", "non-existent", "no-notice", contempt proceedings were in the Second Department.

b. Mr. Justice IRA GAMMERMAN, imposed sanctions which "dragooned" actions and proceedings pending in Nassau, Kings, and Westchester County, as a "matter of right" in those counties to his own personal bailiwick, even though he was a named defendant, respondent, and/or Dennis v. Sparks (supra) co-conspirator!

Indeed, Mr. Justice IRA GAMMERMAN "dragooned" a six year old proceeding pending before Hon. STANLEY HARWOOD, in Nassau County, where, by reason of multiple statutory mandates, the action could only take place in Nassau County, the county where the real property was situated and where the judgment debtor resided!

Mr. Justice IRA GAMMERMAN "dragooned" a third party action pending before Hon. LAWRENCE N. MARTIN, JR., of Westchester County, where Mr. Justice IRA GAMMERMAN was a named Dennis v. Sparks (supra) co-conspiring witness, after Mr. Justice LAWRENCE N. MARTIN, JR. had granted an "of right" motion transferring such action to Westchester County from New York County!

c. In view of the aforementioned, "double jeopardy" could only be raised when petitioner had an opportunity to address the issue.

d. Significantly, there is no claim that petitioner, at any time waived his "double jeopardy" rights.

POINT I

ALL PROSECUTIONS BASED ON SUBSTANTIALLY THE SAME FACTS, EVIDENCE, AND ASSERTIONS, AS WERE PRESENTED TO MR. JUSTICE LESTER EVENS, WHICH VINDICATED APPELLANT, MUST BE TERMINATED AS VIOLATIVE OF AMENDMENT V OF THE UNITED STATES CONSTITUTION AND ARTICLE 1 §6 OF THE CONSTITUTION OF THE STATE OF NEW YORK

1. Smalis v. Pennsylvania, U.S. , 106 S.Ct. 1745, decided about three weeks before the Order of the Appellate Division, resolves any and all doubt, if doubt there was or should have been, about the fundamental violation of appellant's "double jeopardy" rights, with the continued prosecution of the other, multiple, non-summary criminal contempt proceedings against the appellant based on the same facts, evidence, and/or assertions.

2. Even before Smalis v. Pennsylvania (supra), there was little doubt that all other prosecutions based on the same facts, evidence, and/or assertions were barred under the "double jeopardy" prohibitions contained in the federal and state constitutions (Burks v. United States, 437 U.S. 1; Greene v. Massey, 437 U.S. 19; Ashe v. Swenson, 397 U.S. 436; Benton v.

Maryland, 395 U.S. 784 North Carolina v. Pearce, 395 U.S. 711; People v. Brown, 40 N.Y.2d 381, 386 N.Y.S.2d 848, cert. den. 433 U.S. 913; People v. Farson 244 N.Y. 413; People v. Davis, 91 A.D.2d 948, 458 N.Y.S.2d 563 [1st Dept.]; People v. Dann, 100 A.D.2d 909, 474 N.Y.S.2d 566 [2d Dept.]; Rafferty v. Owens, 82 A.D.2d 582, 442 N.Y.S.2d 571 [2d Dept.]; People v. Warren, 80 A.D.2d 905, 437 N.Y.S.2d 19 [2d Dept.]).

3a. Since the "phantom" proceedings, before Mr. Justice IRA GAMMERMAN, a corrupt and fixable jurist, were essentially ex parte, without any attempt to comply with Judiciary Law §756, "double jeopardy" rights had to be asserted collaterally.

b. There is nothing inherently inappropriate about collateral assertions, when, as here, an "extrinsic fraud" is claimed (United States v. Throckmorton, 98 U.S. 61; Shaw v. Shaw, 97 A.D.2d 403, 467 N.Y.S.2d 231 [2d Dept.]; Tamimi v. Tamimi, 38 A.D.2d 197, 328 N.Y.S.2d 477 [2d Dept.]; Feinberg v. Feinberg, 96 Misc.2d 443, 409 N.Y.S.2d 365 [Sup. Nassau, per Gibbons, J.]; Overmyer v. Eliot, 83 Misc.2d 694, 371 N.Y.S.2d 258 [Sup. Westchester, per Gagliardi, J.]).

POINT II

THE SHAM ORDER OF MR. JUSTICE IRA GAMMERMAN IS CONSTITUTIONALLY VOID, SINCE HIS HONOR IS DISQUALIFIED FROM ADJUDICATING CONTEMPT PROCEEDINGS AGAINST PETITIONER

1. While the courts have the inherent right to transfer an action or proceeding to another jurisdiction to assure a fair trial (Sheppard v. Maxwell, 384 U.S. 333), a jurist who is a defendant, respondent, and/or co-conspiring witness does not have the power to transfer an action from a proper and neutral forum to his own. Indeed, such jurist cannot perform judicial acts with respect to such litigation -- they are void (Judiciary Law §14).

1a. Pre-dating the within petition there existed and does exist litigation between the petitioner and Mr. Justice IRA GAMMERMAN and the Appellate Division, First Department and/or members thereof, with respect to the underlying litigation.

b. In such litigation, the money damages are requested for patent violation of clearly established constitutional rights of a ministerial nature, as well as for Pulliam v. Allen (466 U.S. 648) attorney's fees, as well as equitable relief.

2a. Particularly since criminal contempt proceedings are involved, which has had an "appearance of justice" constitutional criteria since In re Murchison (349 U.S. 133), Mr. Justice IRA GAMMERMAN and the Appellate Division, First Department was constitutionally and by statute (Judiciary Law §14) disqualified.

b. The actions of Mr. Justice IRA GAMMERMAN were simply void (Aetna v. Lavoie, U.S. , 106 S.Ct. 1580, 89 L.Ed2d 823) -- a legal proposition established more than three hundred and seventy-five (375) years ago (Dr. Bonham's Case, 77 Eng. Rep. 646, 652 [1910]; Day v. Savadge, 80 Eng. Rep. 235, 237 [1614]).

POINT III

PETITIONER'S CONSTITUTIONAL RIGHTS UNDER THE
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND
ARTICLE 1 §9, OF THE NEW YORK STATE CONSTITUTION
ARE BEING ABROGATED.

1. Any thought that petitioner's rights are preserved by the "necessarily affected" proviso in CPLR §5501[a][1] (Matter of Aho, 39 N.Y.2d 241, 248, 383 N.Y.S.2d 285, 289), should be dispelled, for Mr. Justice IRA GAMMERMAN simply "stays" such proceedings once they are within his bailiwick, or places same, unadjudicated, in the County Clerk's file.

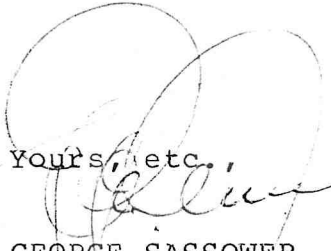
2a. Access to the courts are within the conjugative rights guaranteed by the First Amendment (California Motor v. Trucking Unlimited, 404 U.S. 508), and are more specifically guaranteed under Article 1 §9 of the state constitution.

b. That right is meaningless if Mr. Justice IRA GAMMERMAN, by his "phantom" proceedings, "dragoons" petitioner's applications to his own personal bailiwick, and either stays the proceedings, or simply places them unadjudicated in the County Clerk's file.

c. Under such circumstances, the right to protest or appeal the change of venue (Matter of Aho, supra), never materializes.

Dated: June 15, 1986

Yours, etc.,


GEORGE SASSOWER, Esq.
Attorney for appellant
51 Davis Avenue,
White Plains, N.Y. 10605
(914) 949-2169

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPT.

-----X
In the Matter of the
Application of
GEORGE SASSOWER, individually and on
behalf of PUCCINI CLOTHES, LTD., a
helpless judicial ward,
and HYMAN RAFFE, a judicial hostage,
Petitioners,

-against-
Hon. STANLEY HARWOOD, a Justice of the
Supreme Court of the State of New York,
County of Nassau; and Hon. LAWRENCE N.
MARTIN, JR.; and Hon. ALDO A. NASTASI,
Justices of the Supreme Court of the
State of New York, County of Westchester,
Respondents.

For an Order pursuant to Article 78 of
the CPLR

-----X
S I R S:

PLEASE TAKE NOTICE that petitioners
hereby appeal from an Order of the Supreme Court, State
of New York, Second Judicial Department, dated and
entered May 27, 1986, and from each and every part
thereof, including the whole, insofar as the appellants
are aggrieved, to the New York State Court of Appeals.

Dated: June 12, 1986

Yours, etc.

GEORGE SASSOWER, Esq.
Attorney for petitioners
51 Davis Avenue,
White Plains, N.Y. 10605
914-949-2169

To: Hon. Robert Abrams
Feltman, Karesh, Major and Farbman, Esqs.

Exhibit "A"

HON. WILLIAM C. THOMPSON, Justice Presiding
HON. ISAAC RUBIN
HON. GERALDINE T. EIBER
HON. ARTHUR D. SPATT

} Associate Justices

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In the Matter of George Sassower,
individually, etc.,

Petitioner,

v

Hon. Stanley Harwood, a Justice of the
Supreme Court, Nassau County, et al.,

Respondents.
-----X

Order and Judgment

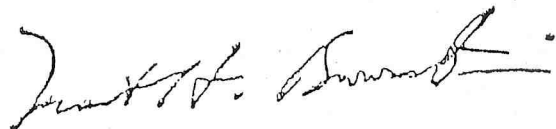
A proceeding having been instituted in this court by the above named petitioner, pursuant to CPLR Article 78, to prohibit the respondents, all Justices of the Supreme Court, from giving any force and effect to any order of Hon. Ira Gammernan, a Justice of the Supreme Court, New York County, entered April 7, 1986; and to prohibit Justice Nastasi from entertaining the pending contempt proceedings against petitioner; and Lee Feltman, Esq., the court appointed Receiver of Puccini Clothes, Ltd., having moved to intervene as respondent in this proceeding and then move to dismiss the proceeding on several grounds and to enforce the injunction issued by the Supreme Court, New York County against petitioner with reference to litigation involving the Puccini Clothes Ltd;

Now, upon the papers filed in support and in opposition to the application, and the papers filed in support of the motion... and upon this court's decision slip heretofore filed and made a part hereof, it is

ADJUDGED that the application is hereby denied and proceeding dismissed, without costs, and it is further

ORDERED that, the motion by the Receiver is hereby denied, without prejudice to any remedy he may have in the Supreme Court, New York County.

Enter:



Acting Clerk of the Appellate Division

May 27, 1986

In the Matter of George Sassower,
individually etc., petitioner, v.
Hon. Stanley Harwood, a Justice
of the Supreme Court, Nassau County,
et al., respondents.

No. 3792

Proceeding, pursuant to CPLR Article 78 to prohibit the respondents, all Justices of the Supreme Court, from giving any force and effect to any order of Hon. Ira Gammerman, a Justice of the Supreme Court, New York County, entered April 7, 1986; and to prohibit Justice Nastasi from entertaining the pending contempt proceedings against petitioner.

No. 3793

Motion by Lee Feltman, Esq., the court appointed Receiver of Puccini Clothes, Ltd., to intervene as respondent in this proceeding and then to move to dismiss the proceeding on several grounds and to enforce the injunction issued by the Supreme Court, New York County against petitioner with reference to litigation involving the Puccini Clothes Ltd.

Application denied and proceeding dismissed, without costs.

The petition fails to state a cause of action. The petitioner is attempting to collaterally attack Judge Gammerman's order by use of CPLR, Article 78.

Motion by the Receiver, denied, without prejudice to any remedy he may have in the Supreme Court, New York County. The shareholders of the corporation are not made party to this proceeding.

THOMPSON, J.P., RUBIN, EIDER & SPATT, JJ., concur.

May 27, 1986

IN RE SASSOWER v HARWOOD

Nos. 3792, 3793