

1987 WL 10825

Only the Westlaw citation
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United States District Court, E.D. New York.

HYMAN RAFFE, individually
and on behalf of PUCCINI
CLOTHES, LTD., Plaintiffs,
v.

CITIBANK, N.A., and JEROME
H. BARR, individually, and as
executors of the estate of MILTON
KAUFMAN, KREINDLER & RELKIN,
P.C., LEE FELTMAN, FELTMAN,
KARESH & MAJOR, ARUTT,
NACHAMIE, BENJAMIN, LIPKIN
& KIRSCHNER, P.C., RASHBA &
POKART, P.C., EUGENE DANN,
ROBERT SORRENTINO, ROBERT
ABRAMS, as Attorney General of
the State of New York, JOHN V.
LINDSAY, and SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK, Defendants.

No. 84 C 0305.

|

May 1, 1987.

Attorneys and Law Firms

GEORGE SASSOWER, White Plains, New
York, IRA POSTEL, New York City, for
plaintiff Hyman Raffe.

KREINDLER & PELKIN, P.C. (Michael J.
Gerstein, of counsel), New York City, for
defendants Citibank N.A. and Jerome H. Barr.

MEMORANDUM AND ORDER

NICKERSON, District Judge.

***1** In separate affidavits filed on March 16, 1987 George Sassower moves to vacate his conviction by this court for criminal contempt and to disqualify the judge. Plaintiff Raffe's current attorney, Ira Postel, has advised the court by a letter dated March 16, 1987 that Raffe did not authorize Sassower to take any action on Raffe's behalf in this proceeding. Familiarity with the previous proceedings in this action, including the court's contempt order of July 7, 1985 and its affirmance by the Second Circuit of Appeals, is assumed.

Sassower was disbarred by the Appellate Division, Second Department for 'serious professional misconduct,' including his criminal contempt conviction by this court, on February 27, 1987. He alleges that these 'subsequent events' reveal that he was entitled under the Constitution to a jury trial before his conviction.

If Sassower's motion is pursuant to [Federal Rule of Civil Procedure 60\(b\)](#), it is plainly untimely. More than one and a half years have elapsed since the contempt judgment. Sassower has been on notice that state disciplinary proceedings were pending against him since January 10, 1986, when the Appellate Division referred the matter to a special referee.

Moreover, the Second Circuit Court of Appeals considered Sassower's claim on appeal that he should have received a hearing before

the contempt order issued, and rejected it as meritless. The claim is now barred.

The court notes that United States District Court Judge Conner on November 11, 1985 and New York State Supreme Court Justice Ira Gammernan on January 23, 1985 permanently enjoined Sassower from commencing further actions involving the Puccini controversy against defendants or others. The court will not sanction this apparent attempt to defy those orders.

In any event, Sassower's claim lacks merit. See [Muniz v. Hoffman](#), 422 U.S. 454, 475–77 (1975) and cases cited.

Sassower's 'disqualification affirmation' is to disqualify the judge and 'compel disclosure by His Honor of all ex parte conversations with the defendants or by others on their behalf.' Sassower alleges the judge is 'among' defendants' 'stable of corrupt judges.' He also states that '[t]here will shortly be filed with the Supreme Court of the United States such accusation' and that '[t]he accusation, with supporting evidence will be filed with' members of Congress, the Justice Department, the media, bar associations, and public interest groups. Finally, Sassower states that 'His Honor is an active defendant in a lawsuit brought by your affirmant.'

The court construes Sassower's affirmation as a motion to have the judge disqualify himself for bias or prejudice. To the extent it rests

on conclusory allegations about the judge's 'corruption,' it is insufficient under 28 U.S.C. § 144 (1982). See [Hodgson v. Liquor Salesmen's Union Local No. 2](#), 444 F.2d 1344 (2d Cir. 1971). Moreover, because Sassower is not a party in the underlying action and has not supplied a certificate by counsel of record stating the affidavit is made in good faith, the affidavit does not satisfy the statutory requirements. 28 U.S.C. § 144 (1982).

*2 If Sassower's affidavit is made under 28 U.S.C. § 445, neither his vague charges of partiality by the judge nor his suits and threatened other actions justify recusal. [In re Martin-Trigona](#), 573 F. Supp. 1237, 1242–43 (D. Conn. 1983), appeal dismissed, 770 F.2d 157 (2d Cir. 1985), cert. denied, 106 S. Ct. 1285 (1986). A judge is not disqualified just because a litigant sues or threatens to sue him. [United States v. Grismore](#), 564 F.2d 929, 933 (10th Cir. 1977), cert. denied, 435 U.S. 954 (1978). See [United States v. Whitesel](#), 543 F.2d 1176, 1181 (6th Cir. 1976), cert. denied, 431 U.S. 967 (1977). Obviously a litigant should not be enabled to judge-shop merely by making written attacks upon or filing a complaint against the assigned judge. [United States v. Bray](#), 546 F.2d 851, 857–58 (10th Cir. 1976); [Martin-Trigona](#), supra, at 1243.

The motions are denied. So ordered.

All Citations

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