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

KATHLEEEN C. WOLSTENCROFT,

Plaintiff-Respondent,

-against-

DORIS L. SASSOWER,

Defendant-Appellant

A.D.#92- 03928/29
Defendant-Appellant's
AFFIDAVIT IN SUPPORT
OF RECUSAL
ORAL APPLICATION FOR

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the above-named Defendant-Appellant and personally familiar with the facts, papers and proceedings hereinafter referred to.

2. This Affidavit is submitted, without prejudice to my right to counsel, in support of an application for recusal of this Court from any adjudication of the two appeals in the above-captioned matter, which I was shocked to learn, late yesterday afternoon, had been calendared for oral argument on today's calendar.

3. I vehemently object to this Court's hearing of same and request that it immediately recuse itself by reason of its actual and apparent bias. I understand that Justice Ritter has already recused himself from the panel assigned to hear these appeals.

4. This Court and I are in active adversarial litigation in the federal courts. It is, thus, patently improper

Ex "O" 594

for this Court to adjudicate any matters involving me, particularly, where--as here--those matters are encompassed within such pending litigation. Under such circumstances, the law is clear that this Court is absolutely disqualified.

5. Each of the twenty justices of the Appellate Division, Second Department are defendants in my pending action in the District Court of the Southern District of New York, Sassower v. Mangano, et al., 94 Civ. 4514, and were personally served with the Summons and my Verified Complaint on October 17, 1994, which is incorporated herein by reference. The admission of service is annexed hereto as Exhibit "A".

6. As the Justices should know, they were directed to file their Answers to my Verified Complaint, and, pursuant to stipulation requested by their attorney, the Attorney General of the State of New York, such Answers were due yesterday, January 9, 1995.

7. Thus, the Justices of this Court cannot honestly claim to be unaware of the fact that the Verified Complaint includes allegations relating to the two Orders of Justice Nicholas Colabella which are the subject of the instant appeal--and upon which this Court authorized disciplinary proceedings against me, on which the January 28, 1994 Petition is based.

8. This Court gave such authorization, notwithstanding it knew from the two Article 78 proceedings I had brought before

it against Justice Colabella (A.D. #92-01093[1]; A.D. #92-02348) in connection with each of the two subject Orders that he was obligated to have disqualified himself. I was entitled to such disqualification in light of the "appearance of impropriety" set forth by me, specifically, that Administrative Judge Angelo Ingrassia had hand-picked Justice Colabella to sit on the case after his denial of my formal change of venue motion. That motion had been based, inter alia, on the bias against me in the Ninth Judicial District because of my involvement as counsel in the highly political Election Law case of Castracan v. Colavita, wherein Anthony Colavita, Chairman of the Westchester County Republican Committee, was the first named Respondent. Nevertheless, when Administrative Judge Angelo Ingrassia assigned the Wolstencroft case to Justice Colabella he did so with full knowledge of the fact that Justice Colabella and Mr. Colavita had a ~~were~~ close personal, professional, and political relationship, going back to childhood, and that Justice Colabella had been Mr. Colavita's first choice for the Westchester Surrogate judgeship, which formed the cornerstone around which the seven-judge trading Deal I was challenging in Castracan v. Colavita (A-1241-1246).

9. The uncontroverted record in those Article 78 proceedings exposed Justice Colabella's actual bias, as manifested by a deliberate pattern of sadistic and malicious behavior toward me, constituting a ~~most~~ heinous form of judicial

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[1] The first Article 78 proceeding against Justice Colabella is contained in the Appendix at A-1223-1458.

torture which flagrantly violated my most fundamental constitutional rights.

10. This Court, which in its decision in Sady v. Murphy, the companion case to Castracan v. Colavita, covered up the unlawful political seven-judge trading Deal that case challenged, has an interest in "whitewashing" Justice Colabella's reprehensible behavior--which was of such magnitude as would require an impartial court to refer him to the Commission on Judicial Conduct for disciplinary action.

11. However, to do so would expose this Court's complicity in Justice Colabella's depraved and jurisdictionless conduct when it denied me the Article 78 relief to which the documentary record before this Court in Sassower v. Colabella showed me manifestly entitled. This Court then compounded its complicity by the aforesaid authorizing of disciplinary proceedings, after I filed my two Notices of Appeals (A-1) (A-12) from such Orders.

12. This Court's recent decision in Breslaw v. Breslaw (A.D. #92-00562/4)--which also is the subject of allegations in my federal complaint--only further demonstrates the bias of this Court and the kind of self-interested cover-up I can expect from any decision this Court might render on the Wolstencroft appeals.

13. The Breslaw appeals--which were calendared for oral argument within two weeks after the service of my federal complaint--was decided on November 28, 1994 (Exhibit "B"). Such decision, which did not even identify that it arose out of a

contempt proceeding, avoided the threshold issues presented--which it, likewise, did not even mention--to wit, that Justice Fredman was outrageously biased--to the extent of committing an outright fraud--and deliberately proceeded without jurisdiction in the contempt proceeding (Exhibit "C"). Those very issues are the focus of allegations of my federal complaint.

14. Indeed, it was only by its purposeful failure to do what it was legally bound to do and not addressing the jurisdictional objections I raised that this Court was enabled to "remand" the Breslaw matter, when, as a matter of law, this Court was obligated to reverse and dismiss the contempt proceeding for lack of jurisdiction, as the undisputed controlling law mandated.

15. The Wolstencroft appeals involve a parallel situation, likewise the result of a totally baseless and jurisdictionless contempt proceedings brought against me before a biased judge.

16. It can be anticipated that the panel assigned to decide the Wolstencroft appeals--including thereon two members who sat on the Breslaw appeals--will do its best to avoid giving me the total vindication to which I am entitled.

17. Plainly, this Court benefits in the federal action to the extent that I receive less than full vindication in the Wolstencroft appeals. In view of the fact that this Court has "an interest that could be substantially affected by the outcome" of the Wolstencroft appeals, it is incumbent on it to

disqualify itself. Judiciary Law §14; Code of Judicial Conduct, Canon 3C(1)(c); Rules Governing Judicial Conduct, §103(c).

18. A complaint will be filed against Justice Lawrence*--as well as the other justices assigned to the Wolstencroft appeals--should they refuse to recuse themselves, sua sponte, in accordance with their legal and ethical duty. Additionally, a complaint will be filed against the justices of this Court who--with knowledge of the allegations in the federal complaint concerning Justice Fredman and the Breslaw matter (Exhibit "A")--nonetheless failed to disqualify themselves from the Breslaw appeals.

19. Finally, it must be noted that this Court's so-called "interim" suspension order against me, as well as my Article 78 proceeding against this Court--now on its way to the U.S. Supreme Court--have been the subject of extensive publicity, including a New York Times advertisement on the Op-Ed page of the October 26, 1994 issue (Exhibit "D")[2]. Such adds to the public perception that I will not get a fair and impartial tribunal, should this Court deny me recusal relief, and, instead, exercise its adjudicative jurisdiction over this or any other appeals affecting me.

Doris L. Sassower
DORIS L. SASSOWER

Sworn to before me
this 10th day of January 1995

Robert B. Falk

ROBERT B. FALK
Notary Public, State of New York
No. 02FA1155135
Qualified in New York County
Commission Expires Nov. 30, 1995

[2] This Court calendared the Breslaw appeals immediately following said New York Times advertisement.

* Justice Lawrence sat on the panel which rendered the decision of this Court in Sealy v. Murphy, the companion case to Castracan v. Colavita, referred to at ¶ 10, supra.

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

By Hand

October 17, 1994

Appellate Division, Second Dept.
45 Monroe Place
Brooklyn, New York 11201

Att: Mel Harris, Deputy Clerk

Re: Sassower v. Mangano, et al.
94 Civ. 4514 (SDNY)

Dear Mr. Harris:

Pursuant to our telephone conversation on Wednesday, October 12, 1994, in which you stated after checking it out, that the Clerk of the Court is authorized to accept service on behalf of the Presiding Justice and all Associate Justices, herewith served are 20 copies of my Summons and Verified Complaint in the above entitled action, which you have stated to be the total number of Justices on the Court at this time. It is expected that you will immediately disseminate the copies so that each Justice receives his or her own copy.

It is requested that the Clerk sign the admission of service so as to reflect such personal service on all said Justices.

Very truly yours,

Doris L. Sassower

DORIS L. SASSOWER

DLS/er

Received: 20 copies [signature] - 10/17/94.
Clerk

600 Ex "A"

HON. GUY JAMES MANGANO, PRESIDING JUSTICE
HON. WILLIAM C. THOMPSON
HON. LAWRENCE J. BRACKEN
HON. THOMAS R. SULLIVAN
HON. VINCENT R. BALLETTA, JR.
HON. ALBERT M. ROSENBLATT
HON. SONDRA MILLER
HON. CHARLES B. LAWRENCE
HON. CORNELIUS J. O'BRIEN
HON. DAVID S. RITTER
HON. JOHN COPERTINO
HON. VINCENT PIZZUTO
HON. FRED T. SANTUCCI
HON. DANIEL W. JOY
HON. MYRIAM J. ALTMAN
HON. EDWARD J. HART
HON. WILLIAM D. FRIEDMANN
HON. GABRIEL M. KRAUSMAN
HON. GLORIA GOLDSTEIN
HON. ANITA R. FLORIO, ASSOCIATE JUSTICES

MARTIN H. BROWNSTEIN, CLERK

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

5536q
Z/jv

_____ AD2d _____

Submitted - November 10, 1994

FRED T. SANTUCCI, J.P.
WILLIAM D. FRIEDMANN
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN, JJ.

92-00562
92-00564

Milton Breslaw, plaintiff, v Evelyn Breslaw, defendant-respondent, Doris L. Sassower, et al., nonparty appellants.

DECISION & ORDER

Doris L. Sassower, White Plains, N.Y., appellant *pro se*, and for the other appellant.

Grant & Landau, White Plains, N.Y. (Harvey G. Landau of counsel), for defendant-respondent.

In a matrimonial action, the nonparties Doris L. Sassower and Doris L. Sassower, P.C., appeal from (1) an order of the Supreme Court, Westchester County (Fredman, J.), entered June 24, 1991, which imposed costs and sanctions on the appellants, and (2) a judgment of the same court, entered July 15, 1991, thereon.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is reversed, on the law, the order is vacated, and the matter is remitted to the Supreme Court, Westchester County, for a hearing before a different Justice in accordance herewith; and it is further,

ORDERED that the nonparty appellants are awarded one bill of costs.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action *(see, Matter of Aho,* 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been considered on the appeal from the judgment (CPLR 5501[a][1]).

The appellants, Doris L. Sassower and Doris L. Sassower, P.C., are prior counsel to the defendant wife in her underlying matrimonial action. After a hearing, the appellants were ordered to pay costs and sanctions pursuant to 22 NYCRR 130-1.1, *et seq.*, for, *inter alia*, failing to timely turn over the defendant wife's file to her new counsel pursuant to an order of a Judicial Hearing Officer. The appellants contend, *inter alia*, that the Supreme Court erred in imposing costs and sanctions upon them without affording them a reasonable opportunity to be heard. We agree. In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct (*see*, 22 NYCRR 130-1.1[a]). Conduct is frivolous if "(1) it is completely without merit in law or fact and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; or (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another" (22 NYCRR 130-1.1[c][1], [2]). An award of costs or the imposition of sanctions may be upon a motion or by the court *sua sponte*, after a reasonable opportunity to be heard. "The form of the hearing shall depend on the nature of the conduct and the circumstances of the case" (22 NYCRR 130-1.1[d]). The rule mandates that the award of costs or imposition of sanctions only be made upon a written decision setting forth the offending conduct, why the court finds the conduct frivolous, and why the amount awarded or imposed was appropriate, and it requires that the award of costs or the imposition of sanctions or both be entered as a judgment of the court (*see*, 22 NYCRR 130-1.2). Here, although, arguably, the court set forth in its written decision the offending conduct, why it found it frivolous, and why the amount awarded was appropriate, by denying the appellants, *inter alia*, the right to cross-examine witnesses and the right to present a defense, the court failed to give the appellants the mandated reasonable opportunity to be heard. Accordingly, the matter is remitted to the Supreme Court, Westchester County, for a hearing and reconsideration of the issue of appropriate sanctions and costs, if any (*see*, *Flaherty v Stavrapoulos*, 199 AD2d 301).

We have considered the appellants' remaining contentions and find them to be without merit.

SANTUCCI, J.P., FRIEDMANN, KRAUSMAN and GOLDSTEIN, JJ., concur.

ENTER:

Martin H. Brownstein
Clerk

INTRODUCTION

> The power to punish for contempt should be used sparingly, wisely, temperately, and with judicial self-restraint. It should be exercised with caution, deliberation, due regard for constitutional rights and in accordance with law. 17 C.J.S. §57

This brief will demonstrate that the lower court deployed its contempt power in disregard of the foregoing standards and of the most basic due process requirements.

PRELIMINARY STATEMENT

This is an appeal from a final Judgment (A-6)[1] entered on July 15, 1991, a Decision & Order (A-9) dated and filed June 24, 1991 (hereinafter "the Decision) awarding Respondent $9,042.25 sanctions under NYCRR 130-1.1, imposed by Hon. Samuel G. Fredman (hereinafter "the Judge"), Supreme Court, Westchester County, against "Doris L. Sassower, P.C. and/or Doris L. Sassower, Esq." (hereinafter "P.C." and "DLS" respectively), and from three intermediate Decision/Orders (A-32, A-38, A-50), expressly incorporated therein.

The sanctions award arises out of a contempt proceeding brought on by Respondent's motion within the above-entitled divorce action, to which action Appellants were not parties.

QUESTIONS PRESENTED

1. Does the Decision & Order appealed from facially violate legal rules and judicial standards by, inter alia, incorporating vituperative ad hominem remarks, personal opinions, speculations, hearsay, and ex parte communications, so egregious

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[1] (A-#) indicates the corresponding pages in the Appendix

as to mandate reversal as a matter of law? The lower court did not address this question, but expressed itself without restraint.

2. Is the Decision & Order appealed from void for lack of jurisdiction where, inter alia, Appellants were not parties to the underlying action and were never personally served with process in a plenary contempt proceeding brought in accordance with statutory and legal requirements? The lower court dismissed Appellants' jurisdictional objections as "technical".

3. Is the Decision & Order appealed from void for lack of due process where, inter alia, the lower court made summary contempt findings, without notice, denied Appellants' right to counsel, to cross-examination, to be heard in their own defense, and acted as prosecutor and witness? The lower court denied all due process objections.

4. Should the trial judge have recused himself from presiding at the contempt hearing where he: (a) was himself a required witness as to claimed summary contempt; (b) had pre-existing hostility toward Appellants arising from their having been legal adversaries and professional competitors prior to his taking the bench; (c) had an active, on-going political relationship with Respondent's counsel, undisclosed by him even at the point when Appellants made a recusal motion on other grounds; (d) made prejudgments on substantive issues involved in the contempt motion; and (e) displayed disparate treatment of Appellants and Respondent and her counsel.

Reprinted from the Op-Ed Page, Oct. 26, 1994, *THE NEW YORK TIMES*

The New York Times

Where Do You Go When Judges Break the Law?

FROM THE WAY the current electoral races are shaping up, you'd think judicial corruption isn't an issue in New York. Oh, really?

On June 14, 1991, a New York State court suspended an attorney's license to practice law—immediately, indefinitely and unconditionally. The attorney was suspended with no notice of charges, no hearing, no findings of professional misconduct and no reasons. All this violates the law and the court's own explicit rules.

Today, more than three years later, the suspension remains in effect, and the court refuses even to provide a hearing as to the basis of the suspension. No appellate review has been allowed.

Can this really happen here in America? It not only can, it did.

The attorney is Doris L. Sassower, renowned nationally as a pioneer of equal rights and family law reform, with a distinguished 35-year career at the bar. When the court suspended her, Sassower was *pro bono* counsel in a landmark voting rights case. The case challenged a political deal involving the "cross-endorsement" of judicial candidates that was implemented at illegally conducted nominating conventions.

Cross-endorsement is a bartering scheme by which opposing political parties nominate the same candidates for public office, virtually guaranteeing their election. These "no contest" deals frequently involve powerful judgeships and turn voters into a rubber stamp, subverting the democratic process. In New York and other states, judicial cross endorsement is a way of life.

One such deal was actually put into writing in 1989. Democratic and Republican party bosses dealt out seven judgeships over a three-year period. "The Deal" also included a provision that one cross-endorsed candidate would be "elected" to a 14-year judicial term, then resign eight months after taking the bench in order to be "elected" to a different, more patronage-rich judgeship. The result was a musical-chairs succession of new judicial vacancies for other cross-endorsed candidates to fill.

Doris Sassower filed a suit to stop this scam, but paid a heavy price for her role as a judicial whistle-blower. Judges who were themselves the products of cross-endorsement dumped the case. Other cross-endorsed brethren on the bench then viciously retaliated against her by suspending her law license, putting her out of business overnight.

Our state law provides citizens a remedy to ensure independent review of governmental misconduct. Sassower pursued this remedy by a separate lawsuit against the judges who suspended her license.

That remedy was destroyed by those judges who, once again, disobeyed the law — this time, the law prohibiting a judge from deciding a case to which he is a party and in which he has an interest. Predictably, the judges dismissed the case against themselves.

New York's Attorney General, whose job includes defending state judges sued for wrongdoing, argued to our state's highest court that there should be no appellate review of the judges' self-interested decision in their own favor.

Last month, our state's highest court — on which cross-endorsed judges sit — denied Sassower any right of appeal, turning its back on the most basic legal principle that "no man shall be the judge of his own cause." In the process, that court gave its latest demonstration that judges and high-ranking state officials are above the law.

Three years ago this week, Doris Sassower wrote to Governor Cuomo asking him to appoint a special prosecutor to investigate the documented evidence of lawless conduct by judges and the retaliatory suspension of her license. He refused. Now, all state remedies have been exhausted.

There is still time in the closing days before the election to demand that candidates for Governor and Attorney General address the issue of judicial corruption, which is real and rampant in this state.

Where do you go when judges break the law? You go public.

Contact us with horror stories of your own.

CENTER *for* JUDICIAL ACCOUNTABILITY

TEL (914) 421-1200 • FAX (914) 684-6554
E-MAIL probono@delphi.com
Box 69, Gedney Station • White Plains, NY 10605

*The **Center for Judicial Accountability, Inc.** is a national, non-partisan, not-for-profit citizens' organization raising public consciousness about how judges break the law and get away with it.*