

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

Charles E. Collins, III,

Plaintiff,

- against -

Sol Greenberg,
James Nixon and
Christopher D. Horn,

Defendants.

STATEMENT UNDER RULE 56

Case No.: 1:00-CV-1349

TJM / DRH
U. S. DISTRICT COURT
N.D. OF N.Y.
ORIGINAL FILED
NOV 28 2000

LAWRENCE K. BAERMAN, CLERK
ALBANY

The defendants have filed a motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the basis that there is no justiciable interest stated in plaintiff's complaint on which this Court or any Federal Court may grant relief.

The plaintiff has clearly documented that his constitutional rights to due process, equal protection of the law and his right to counsel at every stage of the criminal proceeding which is the subject of this claim was violated by the defendants.

The plaintiff has clearly documented that the defendants acted in complete absence of all jurisdiction once he appeared before the grand jury and received immunity as the plaintiff did not submit the alleged grand jury waiver of immunity to the grand jury and the fact that he could not validly waive his right to counsel without counsel being present or a judicial inquiry being done by a judge. There was no judicial inquiry.

Further the motion is made on the basis that there are no triable issues of fact unresolved in this matter in that the underlying claims had been litigated, re-litigated, sued and discontinued well before and beyond the statute of limitations for

pendant state actions.

The accrual time to bring this suit has not yet begun, the issues have not been litigated previously as claimed. The plaintiff has not sued the defendants in any court concerning the malicious prosecution or the false imprisonment that began on December 23, 1999 and continues to this day.


The position of the claimant is that the defendant Greenberg and his assistants are liable to the claimant because he could not waive, as a matter of law, his right to counsel before the Grand Jury and as such the Grand Jury proceedings that ensued were unlawful. This fact should have been known or was in fact known to the defendants and therefore they have acted in a tortious manner toward him. Further, the plaintiff never submitted his waiver of immunity to the grand jury and as such testified with immunity. Defendant Horn allowed the defendant to testify without submitting a waiver of immunity to the court as required by statute.

The issue of the waiver of immunity was never passed upon by the Appellate Division of the Third Judicial Department of the State of New York as claimed by the defendants.

That Judge Rosen acted improperly and abused his discretion in issuing his Decision of May 19, 2000. Judge Rosen ignored the fact that CPL §180.10(5) clearly and explicitly states that a defendant who proceeds at arraignment in the local court without counsel does not waive his right to counsel in all future proceedings; the right to counsel attaches at each and every stage of the proceedings; and appearance of the defendant in the grand jury is a critical stage of the proceedings at which the defendant

is entitled to the right to counsel. That the plaintiff never waived his right to counsel before the grand as counsel was not present and there was no judicial inquiry as required by law. Further, Judge Rosen never address the issue that plaintiff waiver of immunity was never submitted to the grand jury which is supported by the grand jury minutes and Mr Horn's testimony in the suppression hearing on March 3, 1999. The plaintiff raised this issue within the five (5) days of his arraignment as required by law.

Dated: November 28, 2000


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