



I am in receipt of a second copy of the proceedings of November 16, 2007.

X *Eleanor Sassower*

Dated: White Plains City Court
August 14, 2008

EA

WHITE PLAINS CITY COURT

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In the Matter of:

JOHN MCFADDEN,

Number

Petitioner,

Docket

F-19751-07/08B

- against -

SP1502/07,

ELENA SASSOWER,

Respondent.

-----x
-----x
In the Matter of:

JOHN MCFADDEN,

Petitioner,

Docket Number

F-19751-07/08B

- against -

SP651/89 and

SP1474/08

DORIS SASSOWER AND ELENA SASSOWER,

Respondents.

-----x
2007

November 16,

BEFORE:

JO ANN FRIIA
Support Magistrate

White Plains Senior Judge

APPEARANCES:

ELENA SASSOWER
Respondent

LEONARD SCLAFANI
Counsel for Petitioner

TRANSCRIBER:

Annette M. Duncan

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1	WITNESSES	DIRECT	CROSS	RE-DIRECT	RE-CROSS
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DESCRIPTION	I.D.	IN. EV.
No Documents Submitted/Received		

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1 [CD one, counter 10:12:04]

2 JUDGE FRIIA: McFadden against Elena Sassower.

3 This being a motion it will be marked submitted
4 for decision ^{by} to me today and a written decision
5 will follow. I really don't know if there is any
6 basis for reply here. It is a pretty straight
7 forward motion. I looked at it earlier today.

8 MR. SCLAFANI: There are several problems,
9 Judge. One is that there is a trial date
10 scheduled for Tuesday and the motion is to stay
11 the trial among other things.

12 JUDGE FRIIA: Then we will make a decision.
13 This will go to Mr. O'Shea. I will try to have a
14 decision done by Monday. We will see - - we are
15 very busy here.

16 MR. SCLAFANI: Right and the other thing is
17 that it is a motion to be argued so it needs to go
18 to Judge Hansberry - -

19 JUDGE FRIIA: Well, we are not sure about that
20 because the motion seeks to have Judge Hansberry
21 disqualified so I have asked my law - - isn't that
22 at least part of the application right so I have
23 Mr. O'Shea, who is our court attorney looking into
24 the propriety of that. Ordinarily this would go

1 back to Judge Hansberry but given the nature of it
2 he feels that maybe I should review it as the
3 senior Judge. We haven't made a decision on that.

4 He and I will speak when we are finished with
5 this morning's calendar again.

6 MR. SCLAFANI: Another problem is there is
7 there is a cross motion for the ^{re} argument and that
8 has to go to Judge Hansberry and that doesn't seek
9 disqualification.

10 JUDGE FRIIA: Okay. So what do you want me to
11 do today?

12 MR. SCLAFANI: And the last thing is that in
13 the decision that it is for which ^{re} the argument is
14 sort respondent there was a suggestion that a
15 prior pending case that involves the same parties
16 and the same subject matter but not the same
17 issues - -

18 JUDGE FRIIA: Right I remember okay.

19 MR. SCLAFANI: Was that the order suggested
20 that that case would be consolidated. The problem
21 is there are other parties in that case and they
22 weren't given notice.

23 JUDGE FRIIA: Right.

24 MR. SCLAFANI: And I have suggested - - I

1 suggested in my admission motion papers and I am
 2 now suggesting in re-argument that would should
 3 have happened in that case the Court there was a
 4 motion pending for summary judgment it was
 5 submitted in full. All it needed was a decision.

JUDGE FRIIA: That is in the other case.

MR. SCLAFANI: In the other case - - all it
 really needed was a decision and the only issue
 pursuant to an order that was issued by the Court
 in that case was whether or not the respondent
 would be successful in a federal case if she has
 now lost so that case was totally ^{ripe} right for a
 summary judgment to have been granted which would
 of course moot out the instant proceedings which
 seeks the same relief although on different
 grounds. Rather than consolidate those two cases
 what should happen is that motion, which has now
 been pending for eight or nine years, should just
 be decided.

JUDGE FRIIA: But that is not on for the Court
 today.

MR. SCLAFANI: No, it is because it is part of
 my cross motion.

JUDGE FRIIA: Well, except that we have to

1 address the threshold question which is whether or
2 not Judge Hansberry is the proper Judge to hear
3 it.

4 MR. SCLAFANI: Right.

5 JUDGE FRIIA: And who the Judge is who is
6 going to hear it on Tuesday and secondly whether
7 or not the matter is in fact trial ready based on
8 what you have indicated.

9 MR. SCLAFANI: And that is - -

10 JUDGE FRIIA: As I understand it. My
11 understanding ^{of} these issues are there are a lot of
12 issues here I agree but you know when you got a
13 lot of paperwork and you could see that there is
14 about a stack of about a foot in front of me - -

15 MR. SCLAFANI: Right.

16 JUDGE FRIIA: You got to think logically so
17 you got to address the matters in order. I don't
18 believe that Judge Hansberry is scheduled for next
19 Tuesday with next Tuesday being a holiday week we
20 are sort of all sharing the calendar, referring to
21 the four Judges here one taking each day, it may
22 very well be that I am the Judge who is going to
23 be hearing this case on Tuesday but I think the
24 threshold question is whether or not Judge

1 Hansberry should properly recuse himself in any
2 event, if it is rendered moot by virtue of the
3 fact that there is another Judge assigned for the
4 trial date on Tuesday which for the record is
5 November 20th and next whether or not this case is
6 in fact trial ready.

7 MR. SCLAFANI: And with great reluctance
8 because I am the petitioner most anxious to
9 proceed expeditiously I nevertheless ^{am} ^{led} compel to
10 suggest that because there are so many - - the
11 motions that were made earlier involve numerous
12 defenses that require numerous witnesses some of
13 whom are lawyers and people that were involved in
14 prior proceedings and establishing the coop and
15 not to know whether or not I am going to trial on
16 those issues is not only a burden for the litigant
17 but it is also going to be impossible to get those
18 witnesses you know to have them on that kind of a
19 schedule so I reluctantly suggest that perhaps the
20 Court might adjourn for the briefest of time in
21 this case to give it a sufficient amount of time
22 to read through each papers and put this case back
23 in a track that makes it more manageable.

24 JUDGE FRIIA: I am going to - - I will speak

1 in a few minutes I just want to get to the issues
2 here raised by Mr. Sclafani who decided to speak
3 first here, so am I to understand that while we are
4 addressing the issues raised in the motion - - the
5 paperwork. In any event, you would like this case
6 put over from Tuesday to a date and at this point
7 counselor, it would have to be after the first of
8 the new year. I cannot give a date in December.
9 What we have scheduled in December are all cases
10 that came on the calendar within the last month or
11 so that are of much more of a necessity than these
12 some of which include criminal matters so I cannot
13 give you a date in December but I certainly can
14 give you a date in January so that is where we are
15 and so are you asking for that or are you asking
16 for - - in any event, the rescheduling of the
17 trial for a date first available in January.

18 MR. SCLAFANI: No, Judge if the Court can't
19 then I assume that the Court will be able to
20 review those papers and have a decision.

21 JUDGE FRIIA: Well, I don't know if I am going
22 to be able to do it. This is a little crazy. I
23 am giving it my best effort today. Also, we were
24 not on for oral argument today. I will be honest

1 with you I am letting you be heard. I don't know
2 that you are going to get a written decision by
3 the close of business on Monday so I think your
4 suggestion of adjourning the case from Tuesday to
5 a date first up in January is going to make the
6 best sense.

7 MR. SCLAFANI: That wasn't my suggestion
8 though, Judge. I can't afford that type of
9 adjournment.

10 JUDGE FRIIA: Well, you know what we are
11 closed by mandate of the judicial district from
12 that Friday afternoon - - I am checking again
13 December 21st until January 2nd alright so the
14 courts are closed except for emergency
15 applications, arraignments and 18080 hearings
16 under the criminal procedure law so already you
17 are losing what turns out to be eleven days of
18 court dates and I am telling you that leaves you
19 just that - - that leaves us just the - - with the
20 equivalent of maybe nineteen working days all of
21 which have matters previously scheduled so I don't
22 know what to say. I will also tell you that if
23 you start the trial on Tuesday it doesn't sound
24 like you are going to be able to finish it on

1 Tuesday so it will go over to a date in January if
2 what you say is true you got a lot of witnesses
3 there is no way we are going to be able to do this
4 in one day so I will make best efforts with our
5 court attorney to have something done in writing.
6 Remember not only does it have to be researched
7 and thoughtfully written but it has to be typed
8 and served by the clerk. You are asking a lot of
9 us in what ends up being two business days.

10 MR. SCLAFANI: That may be true, Judge but
11 with all due respect this was an order to show
12 cause I didn't set this date. The Court suggested
13 this particular date I was to understand
14 specifically so that there wouldn't be an
15 adjournment of the 20th trial date and so that
16 this matter could proceed in you know there may be
17 other matters that are on between now and the 1st
18 of January but I suggest that several of those
19 matters probably most of those matters were
20 matters that came onto to be heard before or after
21 this case was filed back in July.

22 JUDGE FRIIA: Is that in your paperwork?

23 MR. SCLAFANI: I do - -

24 JUDGE FRIIA: What you are telling me now is

1 that in your paperwork?

2 MR. SCLAFANI: I didn't address the issue of
3 an adjournment. The court specifically said that
4 they would make this motion returnable^c on short
5 notice quite short notice we - -

6 JUDGE FRIIA: Look I don't know what you are
7 asking?

8 MR. SCLAFANI: I was suggesting - -

9 JUDGE FRIIA: I think I have addressed all of
10 the issues that you have raised.

11 MR. SCLAFANI: I was suggesting that it might
12 make sense to put it over for a week or two to
13 give everybody time but the Court is saying that
14 is not an option. It is either two months - - two
15 and a half months or - -

16 JUDGE FRIIA: That is not what I am saying,
17 Mr. Sclafani. Obviously, you don't hear me okay.
18 Obviously, you don't hear me okay. What I am
19 telling you is if Tuesday is not an appropriate
20 date and it sounds - - everything you are telling
21 me you are sounding like it is not going to make
22 any sense to try this on Tuesday. I am telling
23 you we don't even have a month to reschedule this
24 case. This case there is no reason in this case

1 to give it priority over the other matters that
2 are already scheduled some of which are criminal
3 trials with defendants in custody so listen to me
4 now you are not^e going to be greatly prejudice^e
5 particularly since what you are telling me that is
6 the case does start on Tuesday - - I am repeating
7 myself it is likely to go over to January in any
8 event and right now we have got to address the
9 issue of which Judge is going to hear it or try it
10 okay. This is what we are going to do - - do you
11 need time to put in any additional paperwork?

12 MR. SCLAFANI: No.

13 JUDGE FRIIA: Mr. Sclafani, do you need time
14 to put in any additional paperwork because when I
15 am finished in the Court today I am going to mark
16 it submitted for decision. Ms. Rodriguez is going
17 to hand deliver this with a wheelbarrow to Mr.
18 O'Shea and he is going to work on it and give it
19 his best effort and I am going to sit with him as
20 he needs my help and we are going to try to get
21 something written and typed by the close of
22 business on Monday giving our best effect you know
23 you got a fifty fifty shot that that is going to
24 happen okay. Do you want any time to reply? Is

1 there any additional paperwork that you want to
2 submit? There is the main motion and cross motion
3 anything else? Ms. Sassower, you have heard the
4 comments of counsel. Is there^s anything else that
5 you want to say?

6 MS. SASSOWER: I sure have much to say, Your
7 Honor. Thank you for permitting me to be heard.

8 JUDGE FRIIA: Let's not get crazy here.

9 MS. SASSOWER: Absolutely not.

10 JUDGE FRIIA: Okay, go ahead.

11 MS. SASSOWER: I request to see the affidavit
12 of service for this cross motion because it must
13 be rejected because ^{it is} untimely.

14 JUDGE FRIIA: Okay. Let me have our clerk
15 take a look at it here because they stamp it in
16 there okay. Could we - - where is the affidavit -
17 - what I am going to do - - first of all Ms.
18 Sassower, do you - - are you indicating to the
19 Court that you haven't received the notice of
20 cross motion?

21 MS. SASSOWER: I was served this morning by
22 hand with the cross motion last night at shortly
23 before seven.

24 JUDGE FRIIA: That is what it says.

1 MS. SASSOWER: But the statute requires three
2 days before the return date for a cross motion.
3 That is untimely.

4 JUDGE FRIIA: Well, let me say something^e - -

5 MS. SASSOWER: May I say additional that the
6 statute requires as I understand it that facsimile
7 service has to be accompanied to be valid. It has
8 to be accompanied by mail service which I dare say
9 Mr. Sclafani does not attest to so at best we have
10 service today indeed in a court room.

11 JUDGE FRIIA: All right. What do you want to
12 say to that Mr. Sclafani, because I will be honest
13 with you with the order to show cause you should
14 have proceeded with a cross order to show cause
15 you should have proceeded with a cross order to
16 show cause to eliminate the statutory time frame
17 is what you should have done. That is what we do
18 in matrimonial matters.

19 MR. SCLAFANI: I don't believe that that is
20 correct but in any event the problem here is was
21 that the order to show cause was incorrectly
22 served in the first place. What was served was a
23 non-conformed copy of the order that failed to
24 include the return date. It wasn't until Tuesday

1 the order to show cause required - - it wasn't
2 until Tuesday that we were even served with the
3 return date on this paper that the order to show
4 cause was defective so that - - there are several
5 procedural problems with this entire thing which I
6 was willing to overlook.

7 JUDGE FRIIA: Well, let me ask you a question
8 you - - so your cross notice of motion is also a
9 response to the motion brought by order to show
10 cause so it is a combination document yes?

11 MR. SCLAFANI: It is opposition and a cross
12 motion.

13 JUDGE FRIIA: So it is really opposition and
14 cross motion. Well, this is what we can do in the
15 interest of time people we can consider the
16 response as a reply or response - - we consider
17 notice of cross motion as a response only to the
18 order to show cause and preclude the cross motion
19 part of it as being untimely served in the
20 interest of time, Ms. Sassower. Unless you want
21 an opportunity to reply to the notice of cross
22 motion in which case I can have it reserved and
23 reissue it now as an order to show cause cross
24 motion.

1 MS. SASSOWER: Personally I would like to see
2 the copy that he is contending he was served last
3 Friday November 9th.

4 MR. SCLAFANI: I am happy to show the Court.
5 There is no return date. The motion is defective.
6 You shouldn't consider the motion.

7 JUDGE FRIIA: For the record I am looking at
8 the order to show cause - - a duplicate original
9 of the order to show cause that was - - counsel,
10 this looks like it was completed.

11 MR. SCLAFANI: No, look at the front, Judge.
12 The return date is not filled in.

13 JUDGE FRIIA: Oh everything else is filled in.

14 MR. SCLAFANI: Right but she failed to give
15 notice of when it was returnable.

16 JUDGE FRIIA: All right. Take a moment.

17 MR. SCLAFANI: So the motion is defective so
18 you shouldn't consider it in the first place which
19 means that the cross motion should be properly
20 considered.

21 MS. SASSOWER: May I be heard?

22 MR. SCLAFANI: It is my understanding in a
23 summary judgment proceeding is that you need to
24 give three days notice except when there is a

1 return date and today is the return date which
2 makes it timely so you must consider it on the
3 grounds of timeliness.

4 JUDGE FRIIA: I am looking at the original
5 order to show cause. He is right if that is his
6 copy and it doesn't look like it was whited out.

7 MS. SASSOWER: May I be heard, your Honor?

8 JUDGE FRIIA: Go ahead.

9 MS. SASSOWER: He did not identify in his
10 papers that he was responding to an order to show
11 cause. That this matter was on for trial and was
12 seeking a stay with respect thereto he raised no
13 objection in his papers as to the manner of
14 service and it is raised by reason thereof. *waived*
15 Additionally, Judge Hansberry did not strike the
16 requirement in the papers for service three days
17 before - - I'm sorry for service of respondent
18 papers - - answering papers three days before the
19 return date. Judge Hansberry additionally gave me
20 until the 14th to effect service on the 13th I
21 faxed Mr. Sclafani and your Honor has a copy of
22 the actual copy that Judge Hansberry signed with
23 the return date of the 16th so Mr. Sclafani knew
24 the return date to be the 16th from at least the

1 13th. Moreover, I dare say he did not
2 independently call up the Court to inquire as to
3 the date. He was in no way prejudice^d but in any
4 event he raised no objection^e and it is waived.
5 Now additionally, if I may I have a right which I
6 certainly - - were the cross motion to be deemed
7 acceptable which I would argue it is not and has
8 to be rejected for short service because having
9 nothing to do with my papers his cross motion is
10 short served and untimely but even were his papers
11 to be deemed acceptable by way of opposition to my
12 order to show cause I was entitled to under Judge
13 Hansberry's order answering papers three days in
14 advance of the return date.

15 JUDGE FRIIA: Ms. Sassower, what do you want
16 me to do?

17 MS. SASSOWER: I would like opportunity to
18 respond to - - to reply to his deceitful
19 fraudulent answering papers which continue the
20 pattern of his misconduct which has characterized
21 this litigation and which, your Honor I
22 respectfully submit entitles me to further
23 imposition of 130-1.1 sanctions against him.

24 JUDGE FRIIA: All right. Let me - - you are

1 saying a couple of things and I really need to
2 wind it down because I have other attorneys in the
3 courtroom. I actually have people behind the door
4 in custody on some ordinance violations. This is
5 what I am inclined to do and I am ^{ready} really to strike
6 a balance here and that is to carefully read these
7 motions, the applications and the issues raised in
8 them with our Court attorney and to do them like
9 today. On the one hand Ms. Sassower, you are
10 saying that the notice of cross motion is improper
11 but at the same - -

12 MS. SASSOWER: Untimely.

13 JUDGE FRIIA: Untimely improper as untimely
14 but you would like an opportunity to respond.

15 MS. SASSOWER: To respond - - to reply you
16 have already indicated, your Honor if I ^{am} - -
17 correct that this cross motion was not properly
18 noticed and therefore his papers will be
19 considered only by way of opposition.

20 JUDGE FRIIA: Okay.

21 MS. SASSOWER: That being the case fine I
22 would like the opportunity to reply - - reply.

23 JUDGE FRIIA: Listen to me now.

24 MS. SASSOWER: To his opposition papers.

1 JUDGE FRIIA: Listen to what I am going to do
2 there - - and I think a lot of this is not the
3 fault of counsel - - litigants on either side here
4 but rather just you know the issues here being
5 more important sometimes than the actual procedure
6 although we could never forget the procedure is
7 outlined in the CPLR. I do think Ms. Sassower,
8 that counsel's point is raised that the return
9 date was not included in his copy of the motion.
10 On the other hand, he is ~~justice~~ ^{just as} - - responsible
11 here for not timely filing the notice of cross
12 motion. I however believe that the issues raised
13 on both sides should be addressed by the Court and
14 so rather than do silly things like dismiss
15 everything and make you start all over again I am
16 going to allow the applications to proceed and I
17 am going to give you time to respond okay but in
18 so doing this case is going to be put over. Now
19 Mr. Sclafani, don't pop a vein but based on
20 everything I have heard so far number one we are
21 not sure who the Judge is on Tuesday-number one on
22 the hit parade. It is like the day before
23 Thanksgiving and this case should never be given
24 just one day. It should be given if possible at

1 least two consecutive days in a row where hearing
2 the trial so this is what I am going to do. Ms.
3 Sassower, I am in this part on Wednesday for sure
4 because I am doing drug court and I am doing the
5 co-calendar. Could you have your responding
6 papers into the Court by the close of business on
7 Wednesday the 21st? You are going to have to try.

8 MS. SASSOWER: I have a question for you when
9 you say responding papers am I putting in
10 opposition papers ^{to his} for cross motion or reply papers
11 to his opposition to my order to show cause?

12 JUDGE FRIIA: Both - - both because it seems
13 to me that we are addressing the issues that are
14 raised on both sides. I will be honest with you I
15 mean I think it is not semantics because we are
16 necessarily following procedure but at this point
17 I just want to read here what everybody has to say
18 on the issues because I think they are of course
19 important issues and remember in any event we are
20 going to be preserving the issues in the event of
21 an appeal so I have a feeling there is going to be
22 an appeal probably on one side against one set of
23 decisions and on the other side against the other
24 set of decisions. So whether it be me or

1 Hansberry so we are just really preserving a
2 record I want you all to get the issues out so I
3 don't care what you call it Ms. Sassower, just put
4 in your response to the paperwork and get it into^e
5 the Court by - - I am going to direct that it be
6 in if you can be ^{by} four o'clock on Wednesday the
7 21st.

8 MS. SASSOWER: Let's remember that the Court
9 is closed on Thursday.

10 JUDGE FRIIA: Yes.

11 MS. SASSOWER: And I believe nobody is going
12 to proceed to adjudicate this motion at four
13 o'clock when I am directed to submit papers.

14 JUDGE FRIIA: No, but I am here on Friday.

15 MS. SASSOWER: I have a pending petition at
16 the U.S. Supreme Court which is on for court
17 conference on November 20th Tuesday.

18 JUDGE FRIIA: Okay.

19 MS. SASSOWER: I respectfully request until
20 Monday. There is no prejudice here.

21 JUDGE FRIIA: So Monday after Thanksgiving?

22 MS. SASSOWER: Yes, Monday the 26th there is
23 absolutely no prejudice this is - -

24 MR. SCLAFANI: I have no objection.

1 MS. SASSOWER: Thank you.

2 JUDGE FRIIA: No problem.

3 MS. SASSOWER: And let me just one - -

4 JUDGE FRIIA: Close of^obusiness and then that
5 is five o'clock.

6 MS. SASSOWER: Thank you and let me just say
7 on the issue of consolidation Mr. Sclafani here
8 again has misrepresented and unfortunately I think
9 - -

10 JUDGE FRIIA: You are talking about
11 consolidating that other matter? Is there an open
12 matter in this Court?

13 MR. SCLAFANI: Yes, Judge it has been open for
14 ten years. It was held in abeyance pending the
15 outcome of Ms. Sassower's federal case. She lost
16 that case. The Court - -

17 JUDGE FRIIA: Is that in your cross motion?

18 MR. SCLAFANI: It is in the motion originally
19 and the Court said we will just consolidate but
20 they can't because - - and Ms. Sassower raised
21 that in her cross motion and I - -

22 JUDGE FRIIA: All right. This is something
23 that - -

24 MR. SCLAFANI: It should have been

1 adjudicated.

2 JUDGE FRIIA: This is something that our Court
3 attorney and my research has got to really look
4 at. ° °

5 MR. SCLAFANI: We both kind of - - because
6 there may - -

7 JUDGE FRIIA: One wants consolidation and the
8 other doesn't?

9 MR. SCLAFANI: No, neither wants to
10 consolidate.

11 JUDGE FRIIA: Neither one of your want?

12 MS. SASSOWER: The Court was responding in its
13 decision - -

14 MR. SCLAFANI: The Court did respond - -

15 MS. SASSOWER: The Court responded that it is
16 improper and reversible and - -

17 JUDGE FRIIA: Is that Hansberry's decision?

18 MS. SASSOWER: Yes.

19 MR. SCLAFANI: Judge Hansberry's decision.

20 MS. SASSOWER: What he did was he gave no
21 notice to the parties and we are not talking about
22 a single case consolidated we are talking about a
23 second open proceeding where the coop is seeking
24 to remove the proprietary lease of Ms. McFadden

1 rightfully so for the - - and Mr. Sclafani has
2 concealed that case - - that open proceeding
3 before the Court and Judge Hansberry in his
4 decision conspicuously failed to identify the
5 coop's separate proceeding against Mr. McFadden as
6 well as myself which is also part of any purported
7 consolidation. Mr. Sclafani in his cross motion
8 which you are directly^{ing} me to respond to is careful
9 not to identify the status of the prior open
10 proceedings and has given no notice to the parties
11 in those proceedings who have a right to be heard
12 on the issue of consolidation. This matter cannot
13 go forward to trial on Tuesday for a (inaudible)^(myriad)
14 of reasons and not the least being is that the
15 order was one of consolidation and they are not
16 properly before the Court.

17 JUDGE FRIIA: Excuse me if I hear both of you
18 neither side want consolidation?

19 MR. SCLAFANI: We believe that the motion that
20 was pending in the other case where the Court said
21 the only issue remaining on this motion for
22 summary judgment is whether or not Ms. Sassower
23 will prevail on the federal case so we will hold
24 this motion in abeyance pending the outcome of

1 that case. That motion should be decided. The
2 case shouldn't be consolidated. It is a different
3 case. It should just be decided. It is a simple
4 decision. That may moot out this entire case.

5 JUDGE FRIIA: Listen to me I am going to scare
6 myself right now but as you are speaking I
7 actually remember that case.

8 MR. SCLAFANI: Yes.

9 JUDGE FRIIA: Did I decide that case?

10 MS. SASSOWER: No.

11 MR. SCLAFANI: I don't believe so, Judge.

12 JUDGE FRIIA: Judge Riffen ^{Reap (did)} (phonetic).

13 MR. SCLAFANI: I don't believe so, Judge.

14 That was Judge Riffen ^{Reap}.

15 MS. SASSOWER: Judge - -

16 JUDGE FRIIA: I inherited his cases. Alright
17 there you go that is why this is sounding familiar
18 to me.

19 MR. SCLAFANI: The decision is actually in my
20 original motion papers.

21 MS. SASSOWER: Mr. Sclafani's representations
22 with respect to that decision and the proceedings
23 are false, misleading and have been demonstrated
24 as such in my reply papers of September 11th to

1 which I refer to in my order to show cause.

2 JUDGE FRIIA: Listen, stay calm. What is
3 important is that I hear that neither side at this
4 point believes that those cases should be
5 consolidated.

6 MR. SCLAFANI: I don't think they can be.

7 JUDGE FRIIA: Okay. Mr. O'Shea and myself are
8 going to be looking at all of these issues raised
9 to allow - - and we are going to set aside the
10 procedural defects at least as far as the motion
11 practice is concerned. I am going to adjourn the
12 trial and the decision on the motions will
13 actually set forth a new trial date because number
14 one we have to decide the issue of Hansberry
15 proper^{ly} presiding over these cases and second if he
16 is not going to do it then it sounds like I or
17 Judge ~~Leaf~~^{Leak} (phonetic) will be presiding and we
18 will have to look at who is sitting where in
19 January of next year okay. No need to come on
20 Tuesday. This matter is removed by the Court from
21 our trial calendar on Tuesday November 20th for
22 the record and Ms. Sassower has until the close of
23 business which is five o'clock but we always ask
24 that you get here by a quarter to.

MS. SASSOWER: Absolutely.

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[CD one, counter 10:39:52]

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C E R T I F I C A T E

I, Annette M. Duncan certify that the foregoing transcript of proceedings White Plains City Court, John McFadden against ^{Elena} ~~Eleanor~~ Sassower. Docket Number SP1502/07, ~~SP651/89~~ and ~~SP1474/08~~ was prepared using electronic transcription equipment and is a true and accurate record of the proceedings.

Annette M Duncan

Annette M. Duncan

Date cassette was transcribed

March 3, 2009